

REPORTER'S RECORD

75010¹

VOLUME 21 OF 51

TRIAL COURT CAUSE NO. 241-0978-04

THE STATE OF TEXAS * IN THE DISTRICT COURT
VERSUS * SMITH COUNTY, TEXAS
TRACY BEATTY * 241ST JUDICIAL DISTRICT

INDIVIDUAL VOIR DIRE - P.M. SESSION

JULY 20, 2004

FILED IN
COURT OF CRIMINAL APPEALS

JUN 14 2005

Troy C. Bennett, Jr., Clerk

On the 20th day of July, 2004, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the HONORABLE JACK SKEEN, JR., Judge
Presiding, held in Tyler, Smith County, Texas:

Proceedings reported by computerized stenotype machine;
Reporter's record produced by computer-assisted
transcription.

KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

A P P E A R A N C E S

MR. D. MATT BINGHAM, III
State Bar Number 00787085
Smith County Criminal District Attorney

MR. J. BRETT HARRISON
State Bar Number 00793909
MS. APRIL SIKES
State Bar Number 18348790
Assistant Smith County District Attorneys
Smith County Courthouse, Fourth Floor
Tyler, Texas 75702
Telephone: 903.535.0520
Fax: 903.535.0599

REPRESENTING THE STATE OF TEXAS

MR. ROBERT C. PERKINS, JR.
State Bar Number 15790405
MR. KENNETH HAWK
State Bar Number 09243650
Attorneys at Law
112 East Line Street, Suite 202
Tyler, Texas 75702
Telephone: 903.593.7780

REPRESENTING THE DEFENDANT

REPORTER'S NOTE

Uh-huh = Yes - Affirmative response

Huh-uh = No - Negative response

Quotation marks are used for clarity and do not necessarily
indicate a direct quote.

KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

I N D E X

VOLUME 21 OF ____

(INDIVIDUAL VOIR DIRE)

PAGE VOL

JULY 20, 2004 (P.M.)

VENIREPERSON: STATE DEFENSE

DAVID WARNER HANEY

(Out of order)

By Ms. Sikes 9 21

By Mr. Hawk 53 21

Juror excused for the day..... 93 21

VENIREPERSON:

JUAN LUIS GONZALES

Excused by agreement.....95 21

VENIREPERSON:

MICHAEL GENE PATE

Excused by agreement.....95 21

VENIREPERSON:

GEOFFREY ROBERT PERKINS

Excused by agreement.....95 21

I N D E X - CONTINUED

VOLUME 21 OF ____

(INDIVIDUAL VOIR DIRE)

	PAGE	VOL
JULY 20, 2004 (P.M.)		
VENIREPERSON:	STATE	DEFENSE
MAE FRANCIS NELSON		
(Out of order)		
By Mr. Harrison	99	21
By Mr. Perkins	157	21
Juror excused for the day.....	189	21
VENIREPERSON:	STATE	DEFENSE
JOSHUA LEE BENNETT		
By Ms. Sikes	194	21
By Mr. Hawk	243	21
Defense exercise Peremptory Number 4.....	272	21
Court Reporter's Certificate.....	279	21

5

1	ALPHABETICAL VENIREPERSON INDEX			
2	VENIREPERSON:	STATE	DEFENSE	VOL
3	BENNETT, JOSHUA LEE			
4	By Ms. Sikes	194		21
5	By Mr. Hawk		243	21
6	Defense exercise Peremptory Number 4.....		272	21
7				
8	VENIREPERSON:			
9	GONZALES, JUAN LUIS			
10	Excused by agreement.....		95	21
11				
12	VENIREPERSON:	STATE	DEFENSE	
13	HANEY, DAVID WARNER			
14	(Out of order)			
15	By Ms. Sikes	9		21
16	By Mr. Hawk		53	21
17	Juror excused for the day.....		93	21
18				
19	VENIREPERSON:	STATE	DEFENSE	
20	NELSON, MAE FRANCIS			
21	(Out of order)			
22	By Mr. Harrison	99		21
23	By Mr. Perkins		157	21
24	Juror excused for the day.....		189	21
25				

ALPHABETICAL VENIREPERSON INDEX - CONTINUED

VENIREPERSON:	PAGE	VOL
---------------	------	-----

PAGE, MICHAEL GENE

Excused by agreement.....	95	21
---------------------------	----	----

VENIREPERSON:

PERKINS, GEOFFREY ROBERT

Excused by agreement.....	95	21
---------------------------	----	----

P R O C E E D I N G S

(July 20, 2004)

(Open court, defendant present, no jury.)

THE COURT: Okay. Back on the record in Cause Number 241-0978-04. The State is present, Ms. Sikes, chief felony prosecutor, is present for the State; Mr. Hawk and Mr. Perkins are present; and the defendant is present.

(Venireperson Haney enters the courtroom.)

THE COURT: Mr. Haney, thank you, first of all, for coming in early, for allowing us to ask you to come in early, and then you coming in early helped us fill in a gap.

What we're going to do now is go through this process we talked about Thursday, a week ago. I don't know how much of the comments I made about individual voir dire that you recall, but, basically, what is going to take place is Ms. Sikes, representing the State, is going to go through and ask you some questions. And after she finishes, Mr. Hawk or Mr. Perkins are going to go through and ask you some questions.

And they're also going to explain some procedures and law that applies to the trial of this type case to be sure that you can follow all the laws that are involved. They're going to ask you your opinion and views on some matters that can be involved in a case such as this.

KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 There are no right or wrong answers. Both
2 Ms. Sikes and either Mr. Perkins or Mr. Hawk, they're just
3 trying to find out how you truthfully feel about some of
4 these issues, some of these laws.

5 So just be sure that when you do answer the
6 question, if it calls for a yes answer, like don't nod your
7 head like this (demonstrating) yes. Just answer out yes.
8 The reason for that is my court reporter, Kim, has to get
9 down any answer of a witness, and she can't, like, put "nod
10 of a head."

11 So when you answer, if it's a yes, say yes;
12 if it's a no, say no, or whatever answer it is. Other than
13 a yes or no, of course, you'll just be giving that answer.

14 Is there anything -- in regard to your
15 questionnaire that you filled out when you were here before,
16 Mr. Haney, that -- anything about it that you need to add to
17 or anything? Have you thought of anything, "I wish I had
18 added that or put that down" or anything?

19 VENIREPERSON HANEY: Not that I know of.

20 THE COURT: Also, if either the State's
21 attorney or the Defense attorney ask you a question you
22 don't really understand what they're asking you, don't
23 hesitate to tell them that. Don't hesitate to just say, "I
24 don't really understand what you're asking me," and they'll
25 restate the question and make it clear for you.

1 With that, the Court will go ahead and turn
2 it over to Ms. Sikes, representing the State of Texas,
3 assistant criminal district attorney, Mr. Haney.

4 MS. SIKES: Thank you very much, Judge.

5 DAVID WARNER HANEY,
6 having been duly sworn as a member of the special venire,
7 was examined as follows:

8 VOIR DIRE EXAMINATION

9 BY MS. SIKES:

10 Q. How are you, Mr. Haney?

11 A. I'm fine. Thank you.

12 Q. I tell everyone -- the Judge is exactly right.

13 There are times when I talk too loud or too fast or my
14 questions aren't very understandable. The Judge is right.
15 If you'll tell me to rephrase it or ask me or tell me you
16 don't understand it, I'll do the best I can to start over,
17 okay?

18 A. Fine.

19 Q. There are going to be things that we're going to
20 talk about, but the very first one I want to mention is, in
21 your questionnaire, you listed -- the Judge asked you in a
22 question if the trial that covers the dates that we have
23 estimated would interfere with any personal plans, and you
24 circled yes and wrote down there that you have a trip to
25 Arkansas planned.

KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 A. I just got back from Arkansas. I went ahead and
2 went early.

3 Q. Well, that was a smart thing. So it's over now?

4 A. It's over.

5 Q. Did you enjoy it?

6 A. I did. It was very cool on Queen Wilhelmina.

7 Q. Well, the Judge has told you who I am. You've
8 been introduced, I think, to all of us at one point or
9 another, maybe a week ago Thursday. I am April Sikes. I
10 work in the DA's Office.

11 You and I don't know each other, correct?

12 A. That's correct. I don't know you.

13 Q. And to my right around the table is the defendant,
14 Tracy Beatty, who has been charged under the indictment of
15 capital murder.

16 Do you know Mr. Beatty?

17 A. No, ma'am.

18 Q. Or his defense team, Mr. Perkins, sitting --

19 MR. PERKINS: Hello.

20 Q. (By Ms. Sikes) -- right there, who just said
21 hello, and Mr. Hawk on the end facing me?

22 A. No, sir.

23 Q. And you don't know that defense team?

24 A. Not personally, no.

25 Q. Okey-dokey. We have a little different role, but

1 I start out just talking about that. You know, obviously,
2 the State of Texas, me and some other lawyers who are
3 working on this case, it is our job -- this is Mr. Harrison,
4 first assistant, that's walking in. You don't know
5 Mr. Harrison, either, Brett Harrison?

6 A. No.

7 Q. Our job is to represent the State of Texas in this
8 prosecution, and we're charged with -- we have the duty of
9 trying Mr. Beatty under an indictment handed down by the
10 grand jury. That's our role in the case. Obviously, the
11 Defense team has a different role, and that is to represent
12 the interests of Mr. Beatty.

13 Makes sense, right?

14 A. Correct.

15 Q. The Judge has a role, and that role is -- there
16 are some things that are obvious, conducting the trial, for
17 example. This hearing that we're having is voir dire, but
18 he also provides the law in the case.

19 I always say it's a relief to me -- I've been
20 a lawyer 15 years, and it's a relief to me that that is the
21 Judge's role. In other words, when you come in here as a
22 juror, you're not charged with already having to know any
23 law that governs capital murder or murder charges or
24 anything that we're going to talk about today.

25 Is that rather a relief to you?

1 A. Yes.

2 Q. And also, you don't know any of the evidence. You
3 haven't heard any of the evidence in the case.

4 A. No. I don't think the newspaper -- I don't take
5 the newspaper even, so I don't know anything.

6 Q. Okay. So what your job would be -- if you sit as
7 a juror in this case, would be to listen to what you hear
8 from the witness stand, all the evidence that's coming in in
9 the trial, and then take the law that the Judge gives you --
10 it's a document called a charge. It's going to be about as
11 thick as you filled out -- and take that law and the
12 evidence that you heard and see how they fit together.
13 That's what you do as a juror.

14 Kind of make sense?

15 A. Yes.

16 Q. I did notice that you had -- it asked you if you
17 knew anything, in your questionnaire, about the case, and I
18 think you said you may have read the newspaper one day. It
19 said on Wednesday, July the 7th. Was that just right
20 before -- do you remember anything about that?

21 A. I think I read the headlines. That's about it.

22 Q. So nothing in that -- in what you've read in the
23 newspaper tells you anything extraordinary about this case?

24 A. No.

25 Q. Certainly nothing that you've read would affect

1 your ability to be fair and impartial?

2 A. I don't think so.

3 Q. I'll tell you what, really, we're trying to do in
4 this process. Everybody at this table -- and by that, I
5 mean the State and the Defense -- all have one common goal,
6 and that's to find -- we call it fair and impartial -- but
7 to find 12 jurors who don't currently know anything about
8 the case.

9 In other words, they don't have -- they don't
10 know any evidence -- if you did, you would just about be a
11 witness -- that can follow -- have the ability to follow the
12 law that the Judge gives and that currently don't have their
13 mind made up one way or another as to guilt or to innocence
14 or as to punishment, what kind.

15 In other words, they're going to come in here
16 and say, "You know what? I'm going to listen to all the
17 evidence, and I'm going to make a decision with my open
18 mind. After I hear everything, I'm going to base my verdict
19 on that."

20 Does that make sense?

21 A. It does.

22 Q. So as we talk this morning, or now this afternoon,
23 as we talk, if you'll just keep those things in mind.
24 That's what we're trying to figure out is if you, as a
25 juror, as a potential juror, would have the ability to do

1 those things.

2 Keeping that in mind, you know, you heard
3 when you were with the big group and maybe in what you read
4 in the headlines that this is a case that involves -- the
5 defendant has been indicted for capital murder, and the
6 Judge told you in that big group that the State had filed
7 its notice to seek the death penalty, correct?

8 A. That's correct.

9 Q. And necessarily, then, we're going to have to have
10 some discussions this afternoon about the death penalty and
11 your feelings.

12 Now, in response to Question 67, you answered
13 that you generally favored the death penalty as a penalty
14 for crime. Is that still the way you feel?

15 A. Yes, ma'am. That's the way I feel.

16 Q. And in the next question, you said that you
17 believed the death penalty is appropriate in some cases.

18 A. That's correct.

19 Q. Have you always felt that way about the death
20 penalty?

21 A. Yes, ma'am.

22 Q. And can you tell us a little bit about how you
23 formed that opinion? You know, what do you base that upon,
24 your feelings?

25 A. Personally, I just don't believe that if a person

1 takes another person's life, that they ought to pay with
2 their life.

3 Q. Is that something that you've just kind of always
4 believed?

5 A. Yes, I've always believed that.

6 Q. And we're going to talk about -- there are two
7 types of -- if you take someone's life, intentionally or
8 knowingly take someone's life without legal justification,
9 it can be murder or it can be capital murder.

10 In other words, the legislature has said --
11 and we're going to talk about the different ways that that
12 applies. The legislature has said there are some cases
13 where -- for example, if I take a gun and I shoot
14 Mr. Harrison in the head, and I say, "I'm tired of him
15 telling me to ask these questions," and I just kill him,
16 don't care if he's got a wife, don't care about his three
17 kids, laugh while I do it, it's murder; I took his life.

18 But the death penalty in that particular case
19 would not be an option. In other words, the legislature has
20 said there is a certain category of crimes -- and it sounds
21 rather offensive and forgive me -- but that would be just
22 murder. The legislature says that there is a certain
23 category of crimes that are what we call more than just
24 murder, murder plus something else.

25 You know, if you murder two people in the

1 same transaction, you know, if I come in here and kill
2 Mr. Harrison and also shoot Robert Perkins, so Ken Hawk
3 doesn't have another boss in here either. You see what I
4 mean? Two people in the same transaction.

5 If I kill a child under the age of six; if I
6 pay someone to kill or get paid to kill someone, kind of
7 murder-for-hire situation; if I kill a police officer or a
8 fireman in the line of their duty -- you see what I mean?
9 Murder plus something else.

10 Or if during the -- if I murder someone, kill
11 someone while in the course of another felony -- and
12 enumerate a bunch of them -- robbery, burglary, aggravated
13 sexual assault, like rape is what we used to call it; if a
14 man is raping a woman and says, "You know, I'm not going to
15 leave any witnesses," and breaks her neck and kills her, you
16 see how those crimes that I've talked about are something
17 more, murder plus something?

18 In your mind, can you see why the legislature
19 would make a distinction between murder, my example with
20 Mr. Harrison, and murder plus something else?

21 A. I believe I can.

22 Q. And in your mind, if the law told you -- and
23 you've said already that your belief was -- you originally
24 expressed it as a life for a life. In other words, if you
25 take a life, you ought to give your own, correct?

1 A. That's correct.

2 Q. And let me say this: There are no thought police
3 in here. That's why we're here. This is my opportunity,
4 the Defense's opportunity, to talk to you and yours to me to
5 find out how you feel.

6 Because we are after 12 people who are -- you
7 know, you say fair and impartial over and over and over, but
8 you see where it wouldn't be fair to have 12 people on this
9 jury who could never give the death penalty? Right? It
10 wouldn't be fair to the State who seeks it.

11 It wouldn't be fair to have 12 people on a
12 jury who would always give the death penalty. It wouldn't
13 be fair to a defendant on trial. So we're trying to find
14 people who will be able to listen to the evidence and follow
15 the law.

16 That doesn't mean you can't have your
17 personal beliefs, because I'll tell you, I believe the same
18 as you do. I'll tell you that. I believe if someone takes
19 a life, then the death penalty ought to be, for lack of a
20 better phrase, on the table.

21 In other words, that, to me, would be a big
22 deterrent, to keep people saying, "Oh, if they kill
23 somebody, they might kill me."

24 A. I have one exception on that. Like if you
25 accidentally run over somebody in a car and killed them, it

1 might not be your fault.

2 Q. Right.

3 A. But if you just went out to do it...

4 Q. Sure. Where it's not intentionally or knowingly
5 taking someone's life?

6 A. Right.

7 Q. Here's the thing: You are entitled to your
8 belief. It just happens to be the same belief I have, so I
9 understand it, and that's perfectly okay.

10 What's not okay is if that belief affects
11 your ability to sit on this trial as a fair and impartial
12 juror. In other words, if the Judge told you -- and you're
13 sitting on -- and we're just going to use a hypothetical
14 case, okay -- a murder case like I used with Mr. Harrison,
15 shooting Mr. Harrison in the head, if you were a juror on
16 that case, and the death penalty was not an option, that you
17 wouldn't -- you wouldn't base your verdict on your beliefs
18 that it should be.

19 In other words, the range of punishment on a
20 murder is five to ninety-nine or life. You wouldn't say,
21 "Well, you know what? Regardless of what the evidence is,
22 I'm going to give ninety-nine to life, I'm going to give the
23 maximum, because it ought to be the death penalty."

24 Do you see what I mean?

25 A. I see what you mean.

1 Q. Would you be able to put that feeling aside if the
2 death penalty was an option?

3 A. I think that I could go with what the Judge
4 recommended was the penalty.

5 Q. Sure. And let me talk with you just a little bit
6 more about that. I'm going to give you an example I've used
7 so many times I'm sure everybody here is sick of listening
8 to it.

9 Murder comes in lots of different forms. If
10 a man eats a Girl Scout cookie, and he says, "You know what;
11 that cookie is stale; I just hate those Girl Scouts," and he
12 picks up a machine gun, and he goes down to the corner where
13 they're selling them, and he says, "The first Girl Scout I
14 see, I'm shooting her in the head," and he does, and she's
15 ten, okay -- it's not capital murder because she's not under
16 six -- murder.

17 Brutal, right? Horrible facts?

18 A. Correct.

19 Q. On the other hand, 85-year-old man, been married
20 to his wife for 60 years, loves her with all his heart,
21 they've never spent a night apart, and she's dying of cancer
22 in the hospital, and the doctor comes in, and he's telling
23 the doctor, "Isn't there anything you can do; can't you give
24 her more pain medication; can't you do something; she's in
25 agony, and I can't watch it anymore," he says, "I can't; the

1 medicines don't work anymore; there's nothing I can do; how
2 long is she going to last"; "she's going to have to live
3 like this probably for another week or two," and the doctor
4 walks out, and he says, "I can't take it; I can't watch her
5 live the last two weeks of her life like this," and he
6 unplugs all her equipment, her life-saving equipment,
7 murder, intentionally or knowingly taking someone's life
8 without legal justification.

9 Makes sense? But you see how very different
10 those two situations are?

11 A. Yes, I can understand that difference.

12 Q. And based upon, like, what I told you, then you
13 would have to listen to the evidence because you don't know.
14 If you were sitting on a murder trial, you don't know
15 whether the evidence leans toward the man killing a Girl
16 Scout or the man trying to help his wife.

17 Do you see what I mean?

18 A. Yes.

19 Q. And would you be able to listen to the evidence
20 and base a decision on punishment -- a decision on
21 guilt/innocence, first of all, and punishment on the facts
22 that you hear?

23 A. I believe I could.

24 Q. And let's get back to what I was going to tell you
25 about originally. We'll kind of back up. I've said this so

1 many times I start repeating myself. I don't even know if I
2 remember where the beginning is, but we're going to try.

3 Texas has two parts to a trial. It's called
4 a bifurcated system, a big, fancy word for two parts to a
5 trial. I don't know why they call it that.

6 You've sat on juries before, right?

7 A. Correct.

8 Q. And how long ago was that?

9 A. Probably five, six years. I don't remember.

10 Q. Well, you'll probably remember, so I may be
11 rehashing what you already know, but there are two parts to
12 a trial.

13 The first one is the guilt/innocence phase of
14 the trial, and that's where you hear about the crime itself.
15 Say April Sikes is on trial for DWI. On or about a certain
16 day in Smith County, Texas, did she drive or operate a motor
17 vehicle in a public place while intoxicated, okay?

18 In that trial, as a juror in that case, in
19 the guilt/innocence part of the trial, you're going to hear
20 facts about the crime itself, those elements that I clicked
21 off, right? You're not necessarily going to hear very much
22 at all about the defendant, because the focus is, did the
23 crime happen? Was it caused by this person who is on trial?

24 Make sense?

25 A. Yeah.

1 Q. The trial ought to stand on its own.

2 If you, as a jury, say -- and the burden
3 would be beyond a reasonable doubt, and we'll talk some more
4 about that -- "You know what; I don't think she did, you
5 know" -- say, for example, the prosecutors didn't prove it
6 happened in Smith County, Texas, one of the elements. Then
7 you would have to find April Sikes not guilty, correct?

8 A. Right, if they didn't prove it.

9 Q. That's right. So she leaves, and there is no
10 second part of the trial.

11 Now, if you find beyond a reasonable doubt
12 that April Sikes was guilty, then you move on to the second
13 part, which is this punishment phase of the trial. And
14 that's where you hear about any prior convictions she had,
15 any trips to the penitentiary, any drug abuse, any
16 psychiatric problems, other things that help you decide
17 punishment, kind of like what we talked about, you know.

18 Does that make sense?

19 A. Yes.

20 Q. We're going to talk first about that first stage
21 of the trial, the guilt/innocence phase. There are
22 constitutional principles that are so basic that they apply
23 in every case.

24 Whether it's a speeding ticket case or
25 whether it's a capital murder case, they always apply across

1 the board. And you've probably heard of them, and I know
2 you have, because you've sat on a jury, because you've
3 listened to this in voir dire.

4 One of them is the presumption of innocence,
5 that a defendant, as he or she sits through voir dire and
6 throughout a trial, is presumed by the Constitution to be
7 innocent.

8 Does that make sense to you?

9 A. That's what it says.

10 Q. And as a juror, we have to say 12 people who not
11 only, "You know what; I understand that right," but to also
12 allow the defendant to exercise that right without holding
13 it against her or him.

14 In other words, it wouldn't be worth very
15 much if someone said, "You know what, Mrs. Christopher? You
16 have the right to be presumed innocent, but you know what?
17 I'm not going to give you that right. You can say you're
18 presumed innocent, but you're not in my mind." You see, you
19 have to truly hold the State to its burden.

20 Now, we don't necessarily start out even,
21 because the defendant is presumed to be innocent, right? If
22 you heard all the evidence in the case, then you would have
23 to find a defendant not guilty.

24 Would you agree with me?

25 A. If there was no evidence, yeah.

1 Q. That's right. Or just like what we talked about
2 in the DWI case, when I said I didn't prove it happened in
3 Smith County, I didn't prove all the elements, and you said
4 you would vote not guilty.

5 So that presumption alone is enough to find a
6 defendant not guilty, and what you have to do, as a juror,
7 is require the State to prove to you beyond a reasonable
8 doubt -- and we're going to talk about that -- the elements
9 of that case.

10 Makes sense, right?

11 A. Makes sense.

12 Q. And if the State doesn't, then the defendant is
13 not guilty and can be not guilty based solely upon that
14 presumption of innocence.

15 Makes sense?

16 A. Makes sense.

17 Q. And would you be able to do that?

18 A. I think I can.

19 Q. Now, I get to use my favorite example because you
20 said, "I think I can." There are some questions that just
21 have to have a yes or a no answer.

22 Here's my favorite example: My husband is a
23 PGA golf pro, and he used to play the tour, and there were
24 times -- we've been married -- it will be 16 years next
25 month, and there were times, a long time ago, when he would

1 leave, and he would be gone for four or five weeks at a
2 time.

3 If I said to him, "John, are you going to be
4 faithful to me while you're gone these next five weeks," and
5 he said, "I think so," you think I'm going to let him go?

6 A. I don't know.

7 Q. No. I mentioned earlier I might let his golf
8 clubs go, but he's going to stay there. You know, it's just
9 one of those questions where you have to have a yes or a no.

10 And if you and I were over at Don Juan's
11 having lunch, and you said, "Oh, I think so, and, you know,
12 I feel this way about the death penalty or that way," you
13 know, it wouldn't be any really big deal. It's really none
14 of my business. But in a case like this where we have
15 individual voir dire, this is our opportunity to find out,
16 and sometimes we just have to have a yes or no answer.

17 So would you be able to, as a defendant sits
18 in a trial, presume that defendant to be innocent and
19 require the State to meet its burden?

20 A. Yes.

21 Q. There we go.

22 There are other constitutional rights which I
23 know you talked about in the other trials you sat on. One
24 is the Fifth Amendment right to remain silent or to not
25 testify. It's another one that kind of goes along with that

1 presumption of innocence. One that's not worth a whole lot
2 if we don't allow a defendant to have that right.

3 In other words, if I said, "Mrs. Christopher,
4 you're presumed to be innocent, and you also have the right
5 to remain silent," but then I held it against her if she
6 didn't testify, then it wouldn't be worth very much.

7 Do you understand that?

8 A. I understand that.

9 Q. The burden of proof that we're going to talk about
10 is on the State of Texas. And it makes sense to me when you
11 think about it this way: The grand jury -- are you familiar
12 with the grand jury process? Have you ever been on a grand
13 jury?

14 A. Never been on a grand jury.

15 Q. It's really, I say, a fairly one-sided process.
16 And by that, what I mean is there are 12 people who are
17 chosen to sit as a grand jury for a particular court, okay?
18 Their job is to sift through the cases that the DA's Office
19 brings to them and decide, is there enough to hold this
20 person over for trial or not? It's a very low burden.

21 If the grand jury decides, "You know what;
22 there is," then that's called probable cause. There is
23 probable cause to hold a defendant over for trial. You
24 know, if that was a felony DWI I was talking about, there is
25 probable cause to hold April Sikes over for trial.

KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 And all that means is, you know, it tells
2 Judge Skeen's office to get another green folder and write a
3 name on it and a cause number because you've got yourself a
4 trial, right, a lawsuit or a contest.

5 It's nothing more than that, which is why I
6 think -- you'll probably remember, when you were here for
7 the big group, Judge Skeen said the fact that a defendant is
8 arrested for, charged with, indicted for an offense is no
9 evidence at all in a case.

10 A. Right. I think he said it was hearsay evidence.

11 Q. And it makes sense, doesn't it? Because if the
12 grand jury's burden is that low probable cause, then -- and
13 your burden, as a jury, like the ones you've sat on, is
14 beyond a reasonable doubt, then it's no evidence. You know,
15 the evidence comes to you -- you haven't heard any now,
16 right?

17 A. No.

18 Q. And you're not going to hear any today. We can't
19 discuss the facts with you of the case, because you ought to
20 have 12 people in that jury box who sit there and say on the
21 first day, "Now it starts," right?

22 "Now the evidence begins. I may have seen
23 something in the newspaper; I may have read a headline; the
24 grand jury may have indicted a person; but you know what?
25 So what? So what? Today is the first day of this trial,

1 and I'm going to sit in this jury box, and I'm going to
2 listen to the people who come and testify and make my
3 decision based upon that; keep an open mind."

4 And would you be able to do that?

5 A. Yes.

6 Q. The burden of proof that we talked about is beyond
7 a reasonable doubt. And, of course, depending, I guess,
8 upon when you sat on those other juries, you may or may not
9 have had a definition. There was a time when we didn't;
10 there was time when we did; and now, once again, we do not
11 have a legal definition of beyond a reasonable doubt.

12 What I believe the Court is going to tell you
13 is that -- is a couple of things. First of all, it's a very
14 individual burden of proof. Would you agree that what may
15 be a reasonable doubt to you may be different than what's a
16 reasonable doubt to me or to Mr. Harrison or to Mr. Hawk?

17 You see, there's not a standard, so it's very
18 individual. When do you know beyond a reasonable doubt?

19 Does that make sense?

20 A. Right. I agree with you.

21 Q. And there are a couple of other things that I
22 can't necessarily tell you what it is, but I can tell you
23 what it is not. It is not proof beyond all doubt, like TV
24 shows say "beyond of a shadow of a doubt." I use Perry
25 Mason, which kind of dates me. I don't know what the new

1 shows are, but it's not beyond all doubt, beyond a shadow of
2 a doubt, a hundred percent.

3 Would you agree with me that it would be hard
4 for me to prove anything to you 100 percent if we weren't
5 there? Does that make sense?

6 A. It makes sense.

7 Q. What we also say is we have to extinguish all
8 reasonable doubt in your mind, which would include the fact
9 that you may have some doubts, but they may not be
10 reasonable.

11 Let's use for today -- what time did you get
12 to the courthouse today?

13 A. About 12:30.

14 Q. About an hour ago. Was it raining when you came
15 inside?

16 A. No.

17 Q. I'm not sure what time you'll get out of here, but
18 if you go out and there is a bunch of rain droplets or water
19 droplets on your car, would it be reasonable to assume that
20 it rained on your car?

21 A. Yes.

22 Q. Now, are there other ways your car could have
23 gotten wet?

24 A. Sprinkler system.

25 Q. Sure. The sprinkler system.

1 You know, we're not too far from the fire
2 department. A fireman could have come by and said, "You
3 know what; I'm going to spray his car off for him," and done
4 that, but, you know, the possibilities become less
5 reasonable.

6 Makes sense?

7 The other thing -- we've already hit on it --
8 is that that burden of proof never shifts to the defendant,
9 ever, at any point in the trial, and mainly that's because
10 it starts with that grand jury process that we talked about.

11 You know, the State is the one that takes
12 evidence to the grand jury. You know, the defendant has a
13 right to be there, but he doesn't have a right to have
14 counsel, so his lawyers would be out in the hall. You know,
15 the State presents evidence, the State presents offense
16 reports, things like we talked about, hearsay things.

17 So I can assure you there has never been a
18 defendant knocking on the grand jury door saying, "Indict
19 me, please." You see what I mean? The State brings the
20 charges, so, therefore, it's the State's burden to prove
21 those charges beyond a reasonable doubt or not.

22 And the jury's responsibility would be to
23 listen to that evidence and say, "Did they prove it, or did
24 they not prove it," not holding that right to remain silent
25 against the defendant.

KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 See, I've gone all that base circle to get
2 back to where we were a while ago. You know, there is no
3 circumstance under which I can call a defendant to testify.

4 I can't say to April Sikes in the DWI
5 example, "I'll tell you what, April Sikes, you go take that
6 witness stand, because I've got some questions for you. I
7 want to know how much did you drink that night, and what did
8 you drink, and who served you those drinks."

9 Makes sense? I might like to.

10 A. Makes sense.

11 Q. Sure I'd like to hear it, and that's human nature.

12 You have children?

13 A. Right. I have two.

14 Q. And how old are they now?

15 A. I think the boy is 39, and the girl is about 31 or
16 somewhere along there, 32.

17 Q. And everybody that has at least more than one --
18 everybody that has more than one says, you know -- for
19 example, if you heard arguing or fighting between the two of
20 them -- did that ever happen in your house?

21 A. Yes.

22 Q. I was going to say, if it didn't, we would have to
23 use hypothetical children. But when you hear that and you
24 go back there, as a parent, you want to hear both sides of
25 that story, right?

1 Say something broke. I use my little boy as
2 an example. He had a friend over, and I heard this loud
3 crash and opened the door, and there were two boys, nine
4 years old, and one broken lamp, had one of them that said --
5 my son's name is Jacob -- had Jacob who said, "You know,
6 Mom, I'm going to exercise my Fifth Amendment right to
7 remain silent," and the other one said, "Let me tell you
8 what happened," you know, "Jacob did this, and Jacob did
9 that, and I didn't have anything to do with it," it's almost
10 human nature to think, well, you know, the one who doesn't
11 want to talk must be guilty.

12 Does that make sense?

13 A. Yes.

14 Q. And it's okay to think that. It's okay to walk in
15 that DWI trial and say, "You know what? I wonder what she
16 did. She's sitting in court. She's got two lawyers, you
17 know. She's not testifying. I wonder what she's got to
18 say."

19 All those things are perfectly fine because
20 they are human nature. And you don't come in here -- there
21 is no requirement -- Judge Skeen does not have any machine
22 that's going to erase everything from your memory and
23 everything from your life and all your past experiences or
24 your feelings or your beliefs.

25 It's okay to feel that way. It's just not

1 okay to say, "Because of those things, because of those
2 feelings, I'm then going to hold it against the State or the
3 Defense, like the right to remain silent."

4 It's okay to think, "I wonder what she did.
5 You know, I'd like to hear from her. You know, I wish
6 Ms. Sikes could call her to the stand." Those are fine
7 feelings to have, but you just can't then let that -- those
8 feelings affect your ability to look at the evidence and
9 make a decision based on the evidence.

10 Would you be able to look at the evidence and
11 make a decision based on the evidence if the person didn't
12 testify?

13 A. Yes.

14 Q. And would you also be able to not allow that --
15 the fact that somebody didn't testify affect other parts of
16 the trial? In other words, in the DWI trial, say that
17 defendant -- she didn't testify. You then couldn't say,
18 "Well, then the policeman must be telling the truth because
19 she wouldn't talk."

20 You see where I'm going? Would you be able
21 to say, "Whether she testifies or not doesn't affect the
22 rest of the case," and would you be able to do that?

23 A. Yes.

24 Q. Talking about witnesses for a minute, there are --
25 it looks like you were raised a lot like I was. And there

1 are people that are raised to believe that certain people
2 deserve respect by the positions that they hold.

3 Like I was -- like I was raised to believe
4 that teachers have a certain level of authority and respect,
5 you know, that policemen have this certain level of respect
6 and doctors and a bunch of other people. And that's fine,
7 also.

8 You can have those beliefs. But what the --
9 what you have to do to sit on a jury is this: You have to
10 say, "You know what? Every person that comes and testifies
11 in the trial has the same opportunity to be honest, to be
12 believable, to be credible."

13 Would you agree with me that some people take
14 the stand and may not tell the truth? Would you agree with
15 that?

16 A. That's a possibility.

17 Q. Sure. It's always a possibility.

18 I use this example. A brain surgeon and a
19 janitor are on the same floor of the hospital, and an
20 assault takes place, say, between Ken Hawk and Kim
21 Christopher, and this assault then goes to trial.

22 I'm going to call, as a prosecutor, that
23 brain surgeon, who saw it happen, and I'm going to call the
24 janitor, who saw it happen. And as a juror, you have to be
25 able to say, "You know what? Just because he's a brain

1 surgeon or just because he's a janitor, there are two people
2 that I'm going to afford the same opportunity to come in
3 here and judge them the same, judge their credibility, their
4 believability the same."

5 Would you be able to do that?

6 A. Yes.

7 Q. And that's not to say that either one of those
8 people don't have specialized knowledge. They both do.
9 Maybe I called the janitor as an expert in what sort of
10 floor cleaners were on there. Could it have been slippery?
11 Could Mrs. Christopher have fallen rather than Mr. Hawk hit
12 her?

13 You see what I mean? That's different than
14 whether or not the janitor is honest, right?

15 A. Yes.

16 Q. And perhaps the brain surgeon I called because Ken
17 Hawk caused a head injury to Mrs. Christopher, and I want to
18 know about that.

19 You see what I'm talking about? Does that
20 make sense?

21 A. Yes, that makes sense .

22 Q. And would you be able to give every witness that
23 testifies the same opportunity to prove to you whether they
24 are believable or not?

25 A. Yes.

1 Q. I want to talk for just a second about a lesser
2 included offense. Have you heard that term before?

3 A. Possible.

4 Q. I use a ladder -- a bunch of us do -- a ladder as
5 an example.

6 To sit as a juror, you have to be able to do
7 two things. You have to be able to say, "I can consider
8 lesser included offenses." We're going to talk about what
9 they are. "And I can consider their range of punishment."

10 Like a murder example, the one I used
11 earlier, the man who is raping the woman and breaks her
12 neck, okay, the grand jury returns an indictment in that
13 case of capital murder. That's like that top rung in the
14 ladder, capital murder, the highest offense that can be
15 charged.

16 Well, say you're sitting as a juror on that
17 case, and I don't prove to you that the woman was raped
18 beyond a reasonable doubt. I proved to you that she was
19 murdered; I proved that he did that; but I can't prove to
20 you beyond a reasonable doubt that that man raped her.

21 For you to be a juror in that case, you have
22 to be able to say, "You know what? The grand jury did
23 indict that case as capital murder, but the State didn't
24 prove that to me. The State did prove murder, which is a
25 lesser included offense."

1 And then that's the range of punishment we
2 talked about, five to ninety-nine or life. You see what I
3 mean by that? In other words, as a juror, you wouldn't say
4 automatically, "Well, the grand jury indicted it as capital
5 murder, so it must be capital murder."

6 Would you yourself be able to consider lesser
7 included offenses?

8 A. Yes.

9 Q. And you would be able to consider whatever range
10 of punishment was appropriate for that lesser included
11 offense?

12 A. Yes, I believe so.

13 Q. And you wouldn't necessarily say, "Well, the grand
14 jury indicted it for capital murder; therefore, it must be
15 bad, so when we get down here" -- say you get down here to
16 some offense that carries a two- to twenty-year range. You
17 wouldn't necessarily say, "Well, it started off capital
18 murder, so I've got to give the maximum punishment every
19 time."

20 You wouldn't say that?

21 A. No.

22 Q. You would listen to the evidence and base your
23 verdict upon what you hear?

24 A. Correct.

25 Q. I want to talk a little bit about the sentencing

1 phase in a capital murder case. Are you very familiar, as
2 we sit here today, with that sentencing phase?

3 A. No.

4 Q. There are two punishments, and what we're going to
5 do is we're going to start with this assumption, as we talk
6 right now, that you have been on that capital murder case
7 where we talked about where the man murders and rapes the
8 woman, okay?

9 And we're going to assume that as a jury you
10 found beyond a reasonable doubt that he committed the murder
11 and that he committed the rape, the aggravated sexual
12 assault. As a jury, you found that defendant guilty of
13 capital murder, okay?

14 A. Okay.

15 Q. I'm going to assume that. Then you would then go
16 to the punishment phase of a trial. If you have found the
17 defendant guilty of capital murder, and they're eligible for
18 the death penalty, there are only two options in sentencing,
19 and that is a life sentence or a death sentence.

20 Now, you don't -- which may also be a relief
21 to you -- you don't have a box or a line that you're going
22 to check and say, "Well, that's a life sentence, or that's a
23 death sentence."

24 What the legislature has said is, of the
25 defendants who have been convicted of capital murder -- I

1 use a funnel as an example. This is my imaginary funnel I'm
2 holding in front of you. That group of people who have been
3 convicted of capital murder, out of that group, some aren't
4 even eligible for the death penalty, okay?

5 And so that narrows it down a little bit.
6 Then the legislature says of those who are technically
7 eligible, who is deserving? There has got to be a way to
8 figure that out rather than have you, as 12 jurors, check
9 "life" or check "death."

10 And the way that they narrow that down are
11 called special issues, which is just another legal word for
12 questions. I don't even know why they did that, but that
13 narrows it down.

14 And after these questions have been looked at
15 and answered, the results should be that the people who come
16 out of that funnel are those people who are actually
17 deserving of the death sentence.

18 Does that make sense to you? We're going to
19 talk about the questions individually, but does it make
20 sense that there are questions that narrow down the people
21 who are actually eligible for the death penalty?

22 A. I guess. I'm not familiar with it, but I guess
23 so.

24 Q. We're going to back up and kind of talk about it a
25 little bit. You know, there is a difference between

1 eligible and deserving. Does that make sense?

2 Let me give you an example. I, April Sikes,
3 am technically eligible for probation. Say I'm charged with
4 the felony offense of shooting Mr. Harrison in the head 17
5 times and kicking him and laughing as he dies, that he's not
6 going to ever see his kids again, just a brutal, brutal
7 crime.

8 I'm technically eligible because I've never
9 been convicted of a felony in this or any other state. Now,
10 am I deserving of probation? It doesn't sound like it from
11 what little brutal facts you already know.

12 See, there is a difference in people eligible
13 and people who actually are deserving. And the way that the
14 legislature has said we get to that are some questions
15 called special issues. And I think you've got them up there
16 in front of you. The first one -- do you see them up there,
17 two pieces of paper?

18 A. There are three, but two of them are the same.
19 Issue 1 and Issue 2.

20 Q. If you'll just read what's called Issue Number 1
21 and tell me when you're ready.

22 A. (Complies.)

23 Q. Ready?

24 A. Yeah.

25 Q. That first one says -- is asking if there is a

1 probability that a defendant would commit criminal acts of
2 violence that would be a continuing threat to society?

3 Let me first ask you if that's a good
4 question. Do you think that's a good question, something
5 that ought to be asked in a capital murder case?

6 A. Well, I would think it would be a fair question.

7 Q. Sure. Because what it's really saying -- we call
8 it future danger. What it's really saying is, is the person
9 who has been found guilty of capital murder going to be a
10 future danger, right? Are they going to be a continuing
11 threat to society?

12 Would that help you, as a juror, to know that
13 information in knowing whether or not the death penalty was
14 appropriate?

15 A. I would think it would be something you would need
16 to know.

17 Q. Sure. Let me tell you this: There is a burden of
18 proof on that issue, just like the trial, and that's on the
19 State. In other words, you could -- you've already heard
20 all the evidence in the trial, and you can always consider
21 that when you're answering other questions. But they don't
22 necessarily build on each case.

23 In other words, we can't have people in a
24 capital murder trial who say, "Well, I found that
25 defendant -- you know, she committed capital murder;

1 therefore, I'd always find that she is a future danger."

2 We can't have that. We have to have jurors
3 who say, "You know what? She committed capital murder. I
4 found her guilty of that, but I'm open to listening to what
5 the State has, listening and seeing did they prove to me
6 beyond a reasonable doubt that she's a future danger?"

7 Does that make sense?

8 A. It makes sense.

9 Q. Because here -- here is what's going to happen:
10 You know, I told you there's not going to be any box to
11 check "life" or "death," but you're going to know. You're
12 going to know, when we get finished with this conversation,
13 that the answers to your questions tell you, as a juror,
14 what sentence will be imposed by the Court.

15 For example, if the State does not prove to
16 you that that woman is a future danger, then you, as a jury,
17 would have to answer no, right? No, she's not a future
18 danger. Then a life sentence would be imposed, okay?

19 A. Okay.

20 Q. Now, if the State proved to you beyond a
21 reasonable doubt that she is a future danger, then your
22 answer would have to be yes, and that would then -- the case
23 continues. It goes further down that funnel. You know, you
24 get a little closer to the death sentence. And you know
25 that as a juror because we're talking about it now.

1 As you sit here, not knowing any evidence and
2 knowing the law that we've talked about, would your mind be
3 open to listening to the evidence and deciding whether or
4 not the State has met its burden of proof, whether a capital
5 murder defendant is or isn't a future danger?

6 A. Yes.

7 Q. And you notice -- you mentioned it earlier -- in
8 that particular issue, there's the word "probability."
9 There's a difference between probability and possibility.

10 I use this silly example. Is it possible
11 that the President of the United States could walk through
12 that door behind me?

13 A. It's possible.

14 Q. It's possible. Is it probable?

15 A. Not today.

16 Q. No. No, it's not.

17 And so that's what we're talking about. It's
18 not that the State has to prove a mere possibility; they
19 have to prove a probability and do that beyond a reasonable
20 doubt.

21 There is also language mentioned there,
22 "criminal acts of violence." You notice it doesn't say
23 "felonies," it doesn't say "misdemeanors," "other things
24 charged," "other things convicted." It just says "criminal
25 acts of violence." And that could be a lot of different

1 things. They are what they are to you, correct?

2 A. Correct.

3 Q. The other word I want to talk about is "society."
4 Would you agree with me that people both in and out of the
5 penitentiary deserve protection?

6 A. (No verbal response.)

7 Q. Do you want me to be clearer?

8 A. Yeah.

9 Q. Are you aware that there are people who are in the
10 penitentiary other than inmates; for example, doctors and
11 lawyers and guards, those sorts of people?

12 A. I'm aware of that.

13 Q. Do you believe that those people also deserve
14 protection?

15 A. Yes.

16 Q. And in this question, when it's asking about
17 whether or not a defendant would be a future danger or a
18 future threat to society, would you exclude from society
19 guards, for example?

20 A. No.

21 Q. Or would you want to know about that? Would you
22 exclude guards from your definition of society?

23 A. No, no more than anybody else.

24 Q. No more than anybody else. And what does society
25 mean to you?

1 A. All the people of the land.

2 Q. Sure. All the people of the land.

3 We're going to move on now to that second
4 special issue, which we have to make some assumptions.
5 We've already made the first one, that as a juror, you found
6 her guilty of capital murder. Now we're going to make an
7 assumption that you've found that she is a future danger.
8 The State has proven that to you beyond a reasonable doubt.

9 Now, you know, these things don't build on
10 each other. They're independent. Make an independent
11 determination of guilt or innocence. Make an independent
12 determination of future danger. And all that does is then
13 shoot you to the next one.

14 And the next one says -- if you want to take
15 just a second to read it. I won't rush you.

16 A. Okay. (Complies.)

17 Q. Okay. We call that one the question about
18 mitigation. Before I get started, there is really one big
19 difference between that -- this question and every other
20 thing that we've talked about, and that is simply that
21 there's no burden of proof on anybody.

22 You know, there's never a burden of proof on
23 the defendant, but in this particular case, there is also
24 not a burden of proof on the State.

25 In other words, mitigation, which is

1 something that -- anything that lessens the amount of
2 blameworthiness, the moral blameworthiness, lessens the
3 amount of blame you place on a defendant for the crime, it's
4 either there to you or not.

5 You know, it's kind of one of those things
6 that we talked about, those individual elements. What you
7 may consider -- and you'll hear evidence. You may hear
8 evidence from the State; you may hear evidence from the
9 Defense. And what you'll have to do as a juror is look at
10 all that evidence and say a couple of things.

11 First of all, "Do I see any evidence here
12 that lessens her blameworthiness?" Any reason -- I mean,
13 you can probably think of things that you would consider to
14 be mitigating, but what you consider mitigating and what I
15 consider mitigating may be two separate stories, right?

16 A. Yes.

17 Q. But what the law tells you is simply this: You
18 would be charged with determining, first of all, is there
19 mitigation? And as a jury, it can be different. You can
20 find two or three things that are mitigating. I might find
21 ten; Mr. Harrison might find one. You don't have to agree
22 on what they are, or you would probably be there forever.

23 But what you have to do is say, is there
24 mitigation, and then is it sufficient? That's what that
25 language says. Is it sufficient to basically justify a life

1 sentence over a death sentence?

2 Does it make sense to you, then, that there
3 may be mitigation, something that lessens a defendant's
4 blameworthiness for the crime, but it may not rise to the
5 level to justify life over death? Can you envision
6 something in your mind that might tend to lessen someone's
7 blameworthiness?

8 A lot of times somebody -- you know, you hear
9 things like somebody had a bad childhood or somebody is a
10 good artist. You know, you just hear all kinds of different
11 things.

12 Can you picture -- can you imagine something
13 that you might hear that would be mitigation, lessening the
14 blame on a defendant but yet not rise to the level of
15 justifying life over death? It's hard to say without
16 hearing anything, isn't it?

17 A. It sure is.

18 Q. And that's kind of what I'm getting at. You don't
19 know the evidence, right?

20 A. I don't know any.

21 Q. But you do understand what mitigation is or
22 mitigates, something that would lessen the blame on a
23 defendant, right?

24 A. Correct.

25 Q. So what you have to be able to do as a juror is

1 say, "You know what? Ms. Sikes, I will listen to the
2 evidence, and I will determine if there is something I think
3 is mitigating, and then if there is, if I think it's
4 something sufficient to justify life over death."

5 And can you do those things?

6 A. Yes.

7 Q. And here is the -- the next question is, if you
8 find that there is no mitigation that rises to that level,
9 no mitigation sufficient to warrant life over death, then
10 the defendant would get the death penalty.

11 Does that make sense? In our example, the
12 woman was found guilty of capital murder. She is a future
13 danger, and there is nothing to mitigate the situation.
14 There is nothing to justify or warrant life over death.
15 Then the Court would assess the death penalty.

16 Does that process make sense?

17 A. Yes.

18 Q. And if the -- after listening to the evidence and
19 coming up with your answers to those questions, if that
20 verdict would result in a death sentence, how would you feel
21 about that?

22 A. I would feel okay with it.

23 Q. And on the reverse, you would be equally as open
24 to listening to the evidence and considering the answers --
25 if a life sentence was to be assessed, would you be equally

1 as open to that possibility?

2 A. I believe so, yes. I believe I would.

3 Q. Because, you know, there are people who -- say a
4 defendant is found guilty of capital murder, the one we're
5 talking about, and then you find her to be a future danger.

6 The reverse of that is, if there is
7 mitigation rising to the level to warrant life over death,
8 meaning, as a jury, you find that there is a reason
9 sufficient enough -- and it can be one; it could many --
10 there's a reason to justify life over death, that that
11 defendant, then, doesn't get the death penalty; she gets a
12 life sentence, right?

13 A. Correct.

14 Q. And a life sentence -- in Texas, a life sentence
15 means you serve 40 years day for day before you're eligible
16 for parole.

17 Are you in agreement with that portion of the
18 law?

19 A. I guess. I don't even know the portion of the
20 law.

21 Q. So you would understand that life wouldn't mean
22 actual life to a defendant?

23 A. Right.

24 Q. And you would follow any law that the Court gives
25 you?

1 A. Correct.

2 Q. As far as assessing punishment, you know, you now
3 understand, at least as much as we can give you in this
4 short period of time that we're together, how the capital
5 murder sentencing part of the trial works.

6 And do you see the difference now between
7 that and a lesser included offense? You know, a lesser
8 included offense -- we use murder as an example -- I didn't
9 prove the rape, but I proved the murder. There are no
10 special issues there, there are no special questions there,
11 because the death penalty is not an option.

12 There is a blank, actually, that says is the
13 appropriate punishment five, or is the appropriate
14 punishment ninety-nine to life, which, in essence, no
15 difference between ninety-nine and life.

16 But you see, as a jury, then you would just
17 have to listen to all the evidence and come up with a
18 number, you know, that you believed, as a jury, was the
19 appropriate punishment, right?

20 A. Right.

21 Q. And would you be able to do that as well?

22 A. I think so.

23 Q. There is that "I think so."

24 A. Yes or no. Yes.

25 Q. Yes, you would be able to do that?

KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 A. Yes, I would.

2 Q. The only other thing I really want to touch on is
3 the idea of victim-impact testimony. The courts have said
4 that juries are allowed to know the effects that a crime has
5 had on a victim or a family. You can imagine a criminal
6 case that -- where that testimony would be extremely
7 emotional.

8 I use sexual assault of a child as an example
9 because I've tried a lot of those cases. In fact,
10 Mr. Harrison and I tried a rape of a 14-month-old baby, and
11 you can imagine that the testimony from her mother was
12 emotional, heartbreaking testimony.

13 It's like the other things that we've
14 discussed. That's fine to have those human feelings, but
15 you have to give that testimony whatever evidentiary value
16 it has to you.

17 In other words, say a capital murder case, if
18 that emotional testimony in the punishment phase of trial
19 helps you answer those special issues, helps you know
20 whether a person is a future danger, helps you know whether
21 there is mitigation or not, then you can use it for that
22 purpose.

23 If not, if you think, "You know what; it
24 doesn't have any evidentiary value; it's very sad; it's very
25 heartbreaking; but it doesn't help me answer the special

1 issues," then you don't use it for that purpose.

2 Does that make sense?

3 A. It makes sense.

4 Q. And would you be able to do that?

5 A. Yes.

6 Q. Is there any reason, as you sit here today, that
7 you couldn't be fair to the State of Texas?

8 A. Not that I know of.

9 Q. Or on the reverse, is there any reason that you
10 know of, as you sit here today, that you couldn't be fair to
11 the defendant, Mr. Beatty, in this case?

12 A. Not that I know of.

13 Q. And back to now where we started -- it seems like
14 this morning -- I almost said this morning -- you've said
15 you could be fair to both sides, and the law that I've tried
16 to talk with you about, you could follow that law as given
17 to you by the Court?

18 A. Yes.

19 Q. And you have not at this time made up your mind or
20 committed yourself in any way, your mind is open, and you
21 would listen to the evidence and base your verdict upon that
22 evidence?

23 A. I do not know anything about the case.

24 Q. And you would just base your verdict upon what you
25 hear from the witness stand?

1 A. Correct.

2 Q. Keep your mind open until you hear all the
3 evidence? Could you do that?

4 A. Yes.

5 Q. And you could follow the law given to you?

6 A. Yes.

7 MS. SIKES: I'll pass the venireperson,
8 Judge.

9 THE COURT: Thank you, Ms. Sikes.

10 Mr. Hawk?

11 VOIR DIRE EXAMINATION

12 BY MR. HAWK:

13 Q. Mr. Haney, how are you?

14 A. Tired.

15 Q. So that leads me to my next obvious question.
16 Since you've been sitting here for about an hour, would it
17 help you to stretch those arms or legs, or are we good to
18 go?

19 A. Let's go.

20 Q. Here's the best news for you: I'm not going to
21 talk to you for an hour.

22 A. Okay.

23 Q. In fairness to Ms. Sikes, she covered lots of
24 ground, and I don't need to replot tilled ground.

25 What my hope is, is to ask you a series of

1 questions to learn more about you, which I hope I get to do,
2 to try to figure out, really, what your big philosophy is.
3 And I guess I'll start with the very first thing I always
4 think of as to a juror.

5 And you've been on a jury before, but you've
6 never had to sit and listen to this one-on-one business,
7 have you?

8 A. No.

9 Q. Do you like it?

10 A. No.

11 Q. And, you know, that's as straight ahead as you can
12 be. I wouldn't want to be sitting over there.

13 You know, that microphone doesn't work, by
14 the way. It's sitting in front of you. I thought I would
15 tell you that.

16 Do you want to be on the jury in this case?

17 A. I was summoned, so I appeared.

18 Q. And a lot of people have come to tell us -- come
19 will say, "Yeah," others say, "Makes no difference," and
20 others say, "I'd rather not." And this is my very first
21 thing that I'm going to try to deal with with you.

22 I think that being on a jury and being a
23 juror is like slipping on a pair of shoes. I mean, the
24 shoes fit some people; they don't fit other people. You've
25 listened for about an hour about what the law is, which is

1 kind of a description of what the shoes feel like if you put
2 them on.

3 Everybody wants to put them on, everybody
4 thinks they ought to be able to, but there may be something
5 about what's going on with your feet that don't fit the
6 shoes. And that's what I'm going to explore for a while,
7 okay?

8 A. Okay.

9 Q. Have you talked to others that have been on juries
10 in the past?

11 A. Well, sure.

12 Q. And you've heard about people getting called for
13 jury duty. What's usually the reaction that people get?

14 A. Negative.

15 Q. Yeah. Have you ever asked somebody, "Did you get
16 picked," to somebody else?

17 A. Sure.

18 Q. And has anybody said to you, "No, they didn't
19 think I would be a good juror"?

20 A. I've heard people say, "They really didn't want me
21 on that case" or something like that.

22 Q. But I bet you've never heard somebody say, "No,
23 they discovered that I'm not a fair person."

24 A. I've never heard anybody say that.

25 Q. And I guess the basic reason is, is because

1 everybody in their own hearts want to believe that they are
2 fair, right?

3 A. I would hope so.

4 Q. Truth of the matter is, everyone really is fair
5 from their own heart. Would you agree with that?

6 A. In their own mind, I would agree with that.

7 Q. Yeah. There's not a whole lot of people that know
8 upfront that they are either unfair or biased or leaning one
9 way or that just walk around thinking that about themselves,
10 because we're raised right from wrong, et cetera.

11 Would you agree with that proposition?

12 A. I agree with it.

13 Q. And what I'm kind of driving at is this: It
14 always makes me wonder, from the jury service standpoint, if
15 a juror who is sitting where you're sitting -- and I've
16 never got to sit up there -- is thinking, "You know, I need
17 to answer certain questions certain ways, but I don't want
18 the person asking me the question to think I'm an unfair
19 person."

20 And I don't know if that's going through your
21 head, but what I'm going to try to get home to you is this:
22 I don't know where on your foot the bunions are, the corns
23 are, or the warts are to know if it's going to fit into the
24 shoe I've been talking about. I just don't know. And
25 asking you to do some of things we've talked about is one

1 thing, but I'm going to put some flavor on it.

2 You worked for LaGloria how long?

3 A. 17 years.

4 Q. Just a short time then, right?

5 A. Just a short time.

6 Q. What did you do for them?

7 A. Well, designed computer systems, electronics
8 systems, maintenance.

9 Q. Did you enjoy what you were doing?

10 A. Yes, I did.

11 Q. I mean, on any given day, I'm sure you didn't.

12 A. Well, overall I did, or I wouldn't be there.

13 Q. And over time, did you come to appreciate the
14 people you worked around?

15 A. Some of them.

16 Q. And you -- because you knew them, right?

17 A. Right.

18 Q. And when you left, did you retire, or did you just
19 one day decide you had had it? How did that work out?

20 A. I retired.

21 Q. Left on good terms?

22 A. Excellent terms.

23 Q. Now, let's pretend for a minute that you get
24 called down to be on a jury, and here's what the question
25 is: The question is, is LaGloria a good company to work for

1 or not? We'll just make that pretend question.

2 That's an example of one where you, as an
3 individual, might say, "I'm a fair person, but I've got
4 certain things in my life which I believe, that I'm not
5 going to let anybody change, that may affect how I am as a
6 juror in a case, if the question is if LaGloria is a good
7 place to work."

8 Do you see that example?

9 A. Yes, sir.

10 Q. And it really bears upon the concept of respect.
11 When you talk to other people about their beliefs, ideas,
12 and attitudes on anything, sometimes you probably might want
13 to change their mind, right?

14 A. I think you might.

15 Q. But there comes a point in time where you realize
16 that changing somebody's mind is kind of interfering with
17 their business, right? I mean, have you ever gotten to that
18 point in discussion where y'all are just going to have to
19 agree to disagree with anybody?

20 A. On certain topics, yes.

21 Q. And if somebody comes to you and says, "Mr. Haney,
22 you're just flat wrong about this; I don't care what you
23 think; you're wrong," what's your response to this?

24 A. It's your opinion.

25 Q. There you go. Because your opinion really is

1 what's the most important thing on a lot of issues that
2 we're talking about today. And I'm going to start kind of
3 where you started with Ms. Sikes, whose name I forgot for a
4 minute, but now I remember again, and that is with just a
5 basic philosophical discussion that you had with her about
6 what do you think about the death penalty.

7 I think you said to her, "I am generally in
8 favor of it, like I answered in my questionnaire; I think if
9 you take somebody's life, then you have forfeited your own,"
10 or words to that effect. I don't want to put words in your
11 mouth.

12 Tell me what you think about it.

13 A. Well, I think if I think -- if I thought that,
14 "Well, I need to kill you," and I just go out and kill you,
15 then I think the same punishment ought to come to me.

16 Q. Which is -- did you learn that growing up, reading
17 the Bible, friends, neighbors, society? What made you come
18 to that conclusion?

19 A. I really honestly couldn't say. That's just the
20 way I feel.

21 Q. And you know you're not the only one that feels
22 that way.

23 A. Well, I'm probably not.

24 Q. Have you talked to others who have that same
25 opinion?

1 A. I'm sure I have.

2 Q. And I suspect you've talked to people who say,
3 "Well, I don't care what happens; nobody ever ought to get
4 the death penalty ever," right?

5 A. That's correct.

6 Q. And you had given an example earlier. I think you
7 said, "I have an exception to my philosophy, my personal
8 belief" --

9 A. Right.

10 Q. -- that says, if it's some kind of car wreck or
11 something where you didn't intend to kill somebody --

12 A. Right.

13 Q. -- then you can't honestly give them the death
14 penalty, right?

15 A. Well, no.

16 Q. And that makes sense, because that bears upon
17 what's going on in somebody's mind.

18 A. Right.

19 Q. You'll be comforted to know that in Texas, this
20 concept of what's going on in your mind, they've got legal
21 words for it. They call it a mental state, culpable mental
22 state. I call it a mental state because it's easier to
23 remember.

24 Everything from the bottom of the line, like
25 negligence, which is kind of what you described, just get

1 into a wreck on accident and killed somebody, "Didn't mean
2 to do it; didn't think I was going to do it; I didn't see
3 the red light; I know I'm supposed to; I didn't; ran right
4 through it and killed somebody."

5 And there is actually a statute for that, if
6 you caused somebody's death. It's called criminally
7 negligent homicide. It's a state jail felony. You can't go
8 to the prison for the rest of your life. It's two years in
9 jail is all you can get for that kind of thing.

10 But when you work your way up the ladder,
11 consistent with what you're thinking, the worse someone's
12 mind gets over the deal, the worse the punishment. If it's,
13 for example, recklessness; that's the next level up.

14 When somebody is reckless, that's kind of --
15 it's when you're aware of some kind of risk and you just
16 disregard that risk anyway, knowing what can happen.

17 And in the car wreck example, let's say
18 you're coming up, whereas before you never saw the red
19 light, well, let's say in this example you did see it, and
20 you say to yourself, "I see that red light, and I know if I
21 run it I could kill somebody. I'm going to try it. I think
22 I can make it. I'm going to disregard that risk."

23 You run through the light, and you kill
24 somebody. You see how your mind is in a little bit worse
25 condition in that one than in the first example?

1 A. Correct.

2 Q. And there's actually a statute for that as well.
3 Nothing really called reckless homicide. It's called
4 manslaughter. But it's a second degree felony, two years in
5 prison as a minimum; twenty years as the maximum. Can't get
6 the death penalty; can't get life in prison. I suspect the
7 legislature recognizes your heart wasn't there, in other
8 words, right?

9 But now we're going to move up the line to
10 kind of what you described. If you intentionally or
11 knowingly cause somebody's death, it's your conscious,
12 objective desire to engage in the conduct that caused the
13 result, that's what Texas calls murder.

14 And I think Ms. Sikes gave the example -- I
15 don't know if she shot Mr. Harrison. I don't know what she
16 did today, but that's a good, old-fashioned what you think
17 of as murder-type murder, and that is the first degree
18 felony that she described. Minimum in jail is five years;
19 maximum in jail is life in prison or ninety-nine years.

20 Is that the kind of intentional killing of
21 another that you think about when you think about your
22 philosophy?

23 A. I wouldn't think about the five to ninety-nine
24 years. I would probably think of the death penalty in my
25 philosophy.

1 Q. Exactly. And that's what I was trying to shoehorn
2 in, to figure out where your mind is compared to what the
3 law is telling us.

4 In that specific example that I gave you, the
5 intentional killing, a lot of people say, "Well, that's one
6 where this lady or this man intended to kill somebody, and
7 that's what I think of as you ought to get the death penalty
8 for that."

9 And that's what you think of in your specific
10 philosophy, right?

11 A. Right. It may not be the law, but that's what I
12 think.

13 Q. Yes. And you notice what happened when you just
14 said that? I notice -- was it your uncle or your brother
15 that was in World War II?

16 A. I got an uncle.

17 Q. Your uncle. Well, you see, my generation -- I'm
18 40, and I was too old to get in one war and too young to get
19 in the other, so I am lucky enough to benefit from everybody
20 else's sacrifices.

21 What happened in this sacrifice is that
22 nobody came busting through that door to arrest you for
23 saying, "You know, that may not be the law, but it's the way
24 I believe." And that is where I'm trying to figure out
25 where the shoe fits on this one.

1 I'm trying to figure out, if you're called
2 upon to be a juror in a case, and you, as a juror -- some
3 case, not this case, because we're not talking about this
4 case. We're trying to talk about some pretend case.

5 You're called to be a juror on a case, and
6 you find somebody, based upon the evidence that you hear
7 beyond a reasonable doubt, guilty of the crime of murder,
8 okay? And the Judge tells you that the minimum in prison is
9 five years, the maximum in prison is life in prison.

10 But that's the range of punishment, and you
11 have heard in your mind the evidence, and you're convinced
12 that the defendant that you're a jury on is guilty of that
13 crime.

14 Would it be -- tell me how you would resolve
15 your personal feelings versus what the Judge would tell you
16 about that punishment range.

17 A. I would have to go with what the Judge said. It
18 wouldn't make any difference about my personal feelings or
19 my beliefs.

20 Q. And at that point in time, you see how your
21 feelings may separate from what the law says? You see how
22 there is kind of a separation there?

23 A. I think that's just natural.

24 Q. Yeah. That's actually not a bad thing at all.
25 But I'm going to move you forward to another example.

1 I want you to think that you've made a jury
2 in some case where the State has alleged the offense of
3 capital murder. Now, from the explanation you have heard
4 from Ms. Sikes, tell me what you understand it takes to be
5 found guilty of capital murder in the state -- in Texas
6 under the law as you learned it.

7 It's confusing to a lot of people, and I want
8 me re-explain some of it, if you want me to, but I don't
9 want to waste your time. Do you want me to go over it some,
10 or do you feel comfortable with it?

11 A. Do you want me to answer?

12 Q. Well, yeah. I was going to re-explain something,
13 but if I don't need to, I won't on how capital murder
14 happens.

15 Let me give you the short explanation, okay?

16 A. Okay.

17 Q. In Texas, to actually ever be eligible for the
18 death penalty under the law, you've got to arrive at what
19 you've discussed in your mind, the intentional killing of a
20 human being on one side. You've got to have that. You've
21 got to find from the evidence beyond a reasonable doubt that
22 somebody intentionally murdered somebody.

23 You also have to find that there was the
24 commission of another crime, whether it's a robbery, rape,
25 burglary, some other specific crime. You've got to find

1 beyond a reasonable doubt that this second crime happened.

2 Any questions about that part?

3 A. No.

4 Q. If you don't find from the evidence beyond a
5 reasonable doubt the second crime happened at all, you just
6 don't find that. There may be some evidence of it, none, or
7 a whole bunch; you just don't think they got there. Then
8 what you're left with is, on my left hand, the finding of an
9 intentional murder of a human being.

10 You follow me?

11 A. I follow you.

12 Q. And on the issue of capital murder, you would have
13 to find somebody not guilty of that, based upon the case
14 that we're talking about, you and me.

15 Do you agree with that?

16 A. If you say so. I mean, I don't know the law like
17 that, but if you say so.

18 Q. Okay. What do you think about that, that if you
19 don't find that second crime happened beyond all reasonable
20 doubt, you just think there was a murder but no second
21 crime, you would have to find somebody --

22 A. I don't understand it. I don't understand that.
23 But why does there have to be a second crime?

24 Q. Yeah. A lot of people don't get it.

25 A. No.

1 Q. Why does there have to be?

2 A. Yeah.

3 Q. They did this, for goodness sake. Why does there
4 have to be another one? And that kind of gets to be the
5 rubber meets the road in your specific case.

6 If you're a juror in a case and you find the
7 intentional murder you're talking about and the Judge
8 instructs you there has got to be a second crime, but you
9 don't think there was, what are you going to want to do?

10 A. Well, if there has to be a second crime and they
11 can't prove it, it looks like to me they just have to
12 dismiss the case or find them not guilty.

13 Q. Okay. Could you do that?

14 A. Yes, I think so.

15 Q. Okay. There is a third thing in Texas that
16 they're going to make the State prove. The first thing here
17 is the murder that we've discussed. That's on my left hand.
18 I only have two hands, so I'll use fingers.

19 The second one is the second crime, but
20 there's a third thing, and that is that the second crime
21 actually happened in the course of committing the murder, in
22 the course of committing. Now, that's a strange legal
23 phrase, but it means something.

24 When you think of a capital murder in Texas,
25 many people have said to us, "Well, I think of a convenience

1 store robbery." A guy goes in with a gun to a convenience
2 store, goes to rob the guy, kills him so he can rob him,
3 does kill him, takes the money and runs out. That's the
4 robbery and the murder. That is in the course of.

5 The other example we use is, what happens if
6 I go into this convenience store, and Mr. Perkins is the
7 clerk, and I just start arguing with him. I end up killing
8 him because of the argument, and then I run out because I'm
9 afraid?

10 About an hour-and-a-half later, I realize,
11 you know, I killed Robert Perkins. He was the clerk. I'll
12 bet you, if they haven't figured it out yet, there is
13 probably money that I can go back and take. So I go back
14 over there a couple of hours later to try to get some money
15 or some potato chips or whatever.

16 You see the separation in my second example
17 I'm discussing? You see how there's a big separation in
18 time?

19 A. Yes.

20 Q. Texas law teaches us that the jury gets to decide
21 for themselves, based on the facts of the specific case, did
22 this murder in this second crime happen in the course of,
23 okay?

24 Here's the definition. I don't know why
25 they've got it this long, but it is. Any conduct occurring

1 in an attempt to commit, during the commission, or in the
2 immediate flight after the attempt of the commission of the
3 offense. That's that link that you've got to have.

4 Does that make sense to you?

5 A. I guess it makes sense.

6 Q. Well, don't say you guess. If you disagree, I
7 want to know.

8 A. Well, I can understand what you're saying.

9 Q. Do you agree the State should have to prove that?

10 A. Well, it's the State's burden to prove anything
11 that was committed at all.

12 Q. Yes. And do you think it's a good idea that they
13 should have to?

14 A. Well, yes. In our law and everything, we're
15 innocent until proven guilty, I would think, so...

16 Q. And so in your mind -- or I'm going to
17 fast-forward. We're going to bring this up another level
18 and try to find out if the shoe fits, okay?

19 A. Okay.

20 Q. I want you to pretend that you're on a jury, and
21 you have listened to all the evidence, and you have found
22 from this evidence beyond a reasonable doubt that there was
23 an intentional killing, just like you've discussed, and
24 there was a second crime -- we'll call it kidnapping -- and
25 the State's proven to you beyond a reasonable doubt this

1 link, this in the course of. They've done all three of
2 these things they have to do.

3 In that situation, you, as a juror, can say,
4 "I will find the defendant guilty of capital murder," okay?

5 A. Yes.

6 Q. Now, at that point in time, your personal feelings
7 should tell us what about what should happen to the
8 defendant in the case that we're talking about where you're
9 a juror?

10 A. My personal feelings would convict him of murder.

11 Q. Okay. And what do you think should happen to him,
12 if you find somebody guilty of capital murder in the example
13 I'm giving you, based on your philosophy?

14 A. Well, I personally should think that they should
15 die because they committed murder, too.

16 Q. Okay. Door is still closed. No one has arrested
17 you.

18 A. Okay.

19 Q. I would suspect that your personal philosophy
20 makes it a little bit easier for you to move on to the
21 capital murder questions.

22 Do you agree or disagree?

23 A. I'll agree with you.

24 Q. Let's talk about the first short question. We're
25 just going to call it a short name, the future dangerousness

1 question, rather than the long name which takes me
2 30 seconds to say.

3 The first question that you, as a juror,
4 would have to answer is the future dangerousness question.
5 You've got to be able to answer, as a juror, based upon the
6 evidence in the case, specifically the case you and me are
7 discussing, if the defendant, based on the evidence, is a
8 future danger or if he's not.

9 You're going to answer yes or no to that
10 question, all right? That's the same example that Ms. Sikes
11 was talking about, okay?

12 If you answer no to that first question, "I
13 don't think the defendant is a future danger," what happens
14 to the defendant in the case, in this pretend case you and
15 me are talking about? What sentence does he get?

16 A. He would probably get a lesser sentence.

17 Q. Lesser than what?

18 A. Than what was described. I mean, at the high end
19 or low end. Is that what you're talking about?

20 Q. Yeah, it is what I'm talking about. But,
21 remember, on capital murder, there are just two things that
22 can happen to somebody. It's either the death sentence or
23 life in prison.

24 A. Right.

25 Q. Life in prison is 40 real years before somebody

1 becomes eligible for parole. Now, hopefully, I've taken
2 real good care of myself. I'm 40. I will probably live to
3 be 80, don't you think?

4 A. I don't know.

5 Q. Hopefully. The answer is I hope so. Somebody
6 please say I hope so.

7 And that's the only two possibilities if you
8 find somebody guilty of capital murder. Remember that part?

9 A. I remember.

10 Q. Okay. And if that first question that you're a
11 juror on and the answer to the first danger question, if
12 you're on a jury in some case, and you say, "No, I don't
13 think the defendant is a future danger," life in prison,
14 right?

15 A. That's right.

16 Q. How do you feel about that?

17 A. If that's the law, that's what I would have to go
18 with.

19 Q. Let's talk about what happens when your personal
20 feelings butt up against that special question.

21 Do you think in your heart -- if you hear
22 evidence and you think to yourself, "I don't think the State
23 has proven to me beyond a reasonable doubt that he's going
24 to be a future danger; I don't think they've done it; but if
25 I don't say yes to this question, the guy or the girl" --

1 you know, whatever case it is -- "if I don't say yes, he
2 don't get the death penalty," do you see where that runs
3 afoul of what you believe personally?

4 A. I see.

5 Q. What we're trying to get at is, as a juror, you
6 don't have to be asked to violate your conscience, and you
7 can understand that, right?

8 A. I can understand that.

9 Q. As soon as you start compromising your beliefs,
10 that's not supposed to be the way it works, is it?

11 A. It's not supposed to.

12 Q. Right.

13 A. Sometimes you have to.

14 Q. And that's what I want to know about the "have to"
15 versus "want to" versus "can't," okay?

16 If the evidence shows you, on some case that
17 you're on, that the State has not met their burden of
18 showing you that this defendant, who you've already
19 convicted of intentionally killing somebody and some other
20 crime, you know, capital murder -- if the State hasn't
21 proven to you that he's a future danger, could you honestly
22 answer the question now no because of how you feel? Can you
23 do it?

24 And here the thing is about "I don't know."
25 We've got to know now, not later. So how far are you

1 willing to go with your personal beliefs?

2 And only you can answer that. So can you do
3 that? And if the answer is yes, then look at me and say,
4 "Yes, sir, I can." If the answer is no, then say, "You
5 know, I thought about it, and the answer is no."

6 A. Yes, sir, I can.

7 Q. Okay. Is there any question about that in your
8 mind?

9 A. No.

10 Q. Which now moves us to the second question in a
11 death penalty-type case, and we're going to fast-forward
12 now. You've found the defendant guilty beyond a reasonable
13 doubt of intentionally taking the life of another, plus
14 because -- and the link of -- intentional link in the course
15 of committing some other crime. That's all three things.

16 So you've found somebody guilty. You have
17 now also said, by a verdict form, "I've considered the
18 evidence. I think he's going to be a future danger." So
19 now you've got those in front of us.

20 Now, you're at the very last question that
21 you're going to have to answer, okay, and that's the
22 mitigation question.

23 Now, in talking about society earlier, you
24 agreed with the prosecution, I think, when they suggested
25 that the people in the prison deserved protection as well,

1 right?

2 A. Both parties deserve protection.

3 Q. Whether you're in custody or out of custody?

4 A. Right.

5 Q. Whether you're a guard or a doctor or a nurse or a
6 whatever?

7 A. Or an inmate.

8 Q. Or an inmate.

9 Now, if in the case you and me are
10 discussing, if you found somebody is a future danger, you're
11 fixing to answer the question about mitigation. If you say
12 no, there is no mitigation that warrants life over death,
13 the defendant gets the death penalty.

14 But if you say yes, there is some
15 circumstance or circumstances which mitigates life over
16 death, then this same defendant gets a life sentence.

17 You remember that part?

18 A. I remember that part.

19 Q. And then, as a juror, you just send somebody down
20 to prison to be around all those people who you think is
21 going to be a future danger to society.

22 Do you see the catch-22 you've got?

23 A. I see the catch-22

24 Q. How do you deal with that in your mind personally?
25 Not what you think you should deal with it, but how do you

1 actually deal with that?

2 A. I don't know. I've never had to face that before.

3 Q. In our pretend situation, you're having to face
4 that now.

5 A. Right, so I don't know.

6 Q. I mean, this is somebody that in our pretend
7 situation, you've already found an intentional killer, and
8 he's going to be a danger. You may find from the evidence
9 that there is some circumstances that he might ought to get
10 a life sentence, so you may want to answer that question
11 yes, there is some circumstance. And if that's the case --

12 A. If there is some circumstances.

13 Q. Right, in your own mind.

14 A. In your own mind.

15 Q. Could you answer that question honestly, no matter
16 what would happen to the defendant in your case?

17 A. I would hope that I could.

18 Q. Right. Because when you get right down to it,
19 your personal feelings makes it tough, doesn't it?

20 A. It does.

21 Q. Would you have to compromise your personal beliefs
22 to answer those questions honestly?

23 A. I have to compromise every day in life.

24 Q. Well, yeah. I mean, I respect what you say,
25 because everybody compromises on so many different levels.

1 But when we get to core beliefs, the big question becomes,
2 can I compromise core beliefs?

3 So that's why I want to find out how strongly
4 your opinion is. Because if your opinion is one that can be
5 changed, we need to know that. But if it's a core belief
6 that you don't feel like changing, then we also have to know
7 that as well.

8 A. Well, on the death penalty --

9 Q. Yes?

10 A. -- I think I couldn't be changed.

11 Q. Because that really is a core belief of yours?

12 A. It is. I believe in it.

13 Q. So on the one hand, if you've got a guy that you
14 find guilty of capital murder and you think, personally, he
15 ought to get the death sentence -- right?

16 A. Right.

17 Q. But now the State has got more work for you to do.
18 They're wanting you to jump even over more hurdles, right?
19 They're wanting you to answer a special question about
20 dangerousness, right?

21 A. That's right. That's what they're saying.

22 Q. And then they're wanting to ask you if the
23 evidence shows you mitigation.

24 MS. SIKES: Judge, I'm going to object, as
25 far as -- it's not the State requiring the hurdles; I mean,

1 it's the law; it's the Court's charge.

2 THE COURT: Mr. Hawk, you're going to need to
3 lay some groundwork here. I mean, you know what it is.

4 MR. HAWK: I do.

5 THE COURT: I'm not instructing you what to
6 ask.

7 MR. HAWK: I'm with you.

8 THE COURT: Just be sure he understands what
9 the Court's instructions will be, and the answers are to be
10 based on the evidence.

11 MR. HAWK: Right.

12 Q. (By Mr. Hawk) And I'm going to change that,
13 because I think a one- or two-word change will make it
14 better. Because in your specific mind, we know what you
15 think -- we've talked about that too much already -- what
16 should happen somebody who is guilty of intentionally taking
17 the life of another.

18 But now the State has the burden of proving
19 to you other things. They've got to prove to you the
20 concept of future danger. They've got to prove that to you.
21 That's their burden on that, okay? And then you're going to
22 be required, by the Court's instruction, to decide the
23 evidence to decide this concept of mitigation.

24 Do you see how the law is a little bit
25 different than your personal belief?

1 A. Yes, I see how it's different.

2 Q. Do you think your personal belief is going to
3 interfere even a little bit with you following the Court's
4 instructions?

5 A. I would still believe just like I did before. I'm
6 not going to change it.

7 Q. Do you think your beliefs, your personal beliefs,
8 your core beliefs would interfere at all with your ability
9 to follow the Court's instructions?

10 A. I would hope not, but I cannot be a hundred
11 percent sure. You know, what I believe is the way I believe
12 it.

13 Q. Right. And I don't want you to think I'm trying
14 to change your mind.

15 A. Right.

16 Q. Nobody here is gonna -- this is a core belief. I
17 don't have that right. I'm not gonna; no one is gonna. So
18 I'm going to give you the freedom to be able to say, "Hey,
19 we've been talking about freedoms here, and nobody has
20 busted the door down. I believe how I believe."

21 I'm going to put it a different way and see
22 if this will help you answer it. The State has the burden
23 of proving that first question to you beyond a reasonable
24 doubt, the first question of future dangerousness.

25 Would your personal beliefs lower their bar a

1 little bit about that?

2 A. No.

3 Q. You don't think so?

4 A. No.

5 Q. How would your personal beliefs factor in to the
6 two questions that we're talking about? And you said a
7 little while ago, "I like to think that it wouldn't."

8 A. Yeah.

9 Q. So I'm trying to figure out what's in your mind,
10 how you think it might.

11 A. I don't know. I've never been down that street
12 before. I mean, you know, you're asking questions to me
13 that I've never had to make that decision before.

14 Q. This is probably the longest job interview of your
15 life, isn't it? I hope so anyway.

16 A. Yes, it is.

17 Q. Okay. What's going to happen is, is at some
18 point, when you become a juror, you've got to raise your
19 right hand and take an oath that you will a true verdict
20 render according to the law and evidence, so help you God.
21 That's what you're going to have to swear that oath about.

22 And what both sides need is somebody that not
23 only can take the oath, but the shoe has got to fit.
24 They've got to be able to follow the oath, but you've got
25 to, before you hear anything at all about the case --

1 because you don't know anything about this one, but you've
2 got be able to say, if you can, "I cannot only take the
3 oath, but I'm going to follow it, even if my core belief
4 rams into a Court's instruction somehow."

5 And I guess from the Defense side, from
6 Mr. Beatty's side, we have this concern. We've heard you
7 say, if there is an intentional killing, that in your mind,
8 that ought to get the death penalty.

9 A. Correct.

10 Q. But yet, we know what the law says. The law says
11 it takes more than that. It takes a finding of a juror a
12 future danger, also, and it requires a juror deciding
13 whether there is or there isn't mitigating circumstances.
14 It takes more than just the intentional killing. There's
15 got to be another crime, and it just requires more.

16 And we want to make sure that you're one
17 where this shoe fits, where you're going to say, "I'll make
18 the State prove everything they're required to prove, which
19 is more than me, personally." Mr. Haney says, "Personally
20 speaking, I think he ought to prove the intentional killing,
21 so the question ought to stop there."

22 But the Judge is going to instruct you that
23 it's going to require more than that, the intentional
24 killing, plus a second crime, plus in the course of, plus
25 the finding of future danger, and plus your finding that

1 there is no mitigating circumstance. There are just a lot
2 more things that you're going to have to do.

3 A. To justify a life sentence.

4 Q. That's right. Yes. To justify there either is or
5 there isn't mitigating circumstance to justify a life
6 sentence over death. And these are requirements that you
7 personally don't hold.

8 So my question to you is, just the gut, core
9 question: Can you do that?

10 A. Yes, I can.

11 MS. SIKES: Judge, I was going to object to
12 the question. It seems like we're getting more and more on
13 commitment questions, but he just said --

14 THE COURT: Well, he said, yes, I can.

15 MS. SIKES: Yes, sir.

16 Q. (By Mr. Hawk) All right. We're almost done
17 wrapping this part up, okay?

18 A. Okay.

19 Q. You've heard both sides in this talk to you about
20 these special questions, and the first special question, the
21 future dangerousness, the State does have the burden of
22 proving that one. On the second special question, there is
23 no burden at all.

24 You remember that part on the mitigation
25 part?

1 A. Right.

2 Q. If you become a juror in any case where it's a
3 capital murder allegation and you find somebody guilty of
4 capital murder, and if you find, in some case you're a juror
5 on, that a defendant is a future danger, are you going to
6 require the defendant to show any proof or have any burden
7 of showing you, as a juror, the answer on Special Issue
8 Number 2, about mitigation -- you think the defendant should
9 have to prove -- "show me why there ought to be a life
10 sentence"?

11 A. The defendant doesn't have to prove anything, does
12 he?

13 Q. Even on that second special question, right?

14 A. Even on that second special question.

15 THE COURT REPORTER: I'm sorry. Repeat your
16 answer.

17 VENIREPERSON HANEY: I was asking him was it
18 correct that the defendant doesn't have to show any proof.

19 THE COURT: That is correct. And the Court
20 would so instruct you.

21 Q. (By Mr. Hawk) All right. Let's talk briefly about
22 a couple of other things, and then we'll be done with you,
23 because I bet that chair is not getting any softer.

24 A. No, sir.

25 Q. When you saw -- did you know who the defendant was

1 last Thursday from looking?

2 A. I've never seen the man in my life.

3 Q. Could you tell which one he was? Somebody pointed
4 out Mr. Perkins earlier, and that's why. They picked
5 Mr. Perkins out as the defendant, and I didn't know if you
6 knew -- if you could just pick out who the defendant was
7 last Thursday or today.

8 A. I really wasn't paying that close attention to
9 him.

10 Q. Well, now you've learned who he is, and we're
11 going to talk about whether somebody starts out to be not
12 guilty. You had learned something from -- about the case
13 from the newspaper, right?

14 A. I just read the headlines, just picked it up.

15 Q. Which headline did you read; do you remember?

16 A. I believe it was in Wednesday or Thursday's paper,
17 just on the second or third page or something like that.

18 Q. What was it about?

19 A. Somebody had been charged with murder, and they
20 were fixing to start picking the jury.

21 Q. You stopped at the headline?

22 A. Yeah. I didn't pay attention to all of that.

23 Q. Didn't read enough to form any opinions, right?

24 A. No.

25 Q. Did you wonder to yourself, "Wonder what he did,"

1 when you saw the defendant?

2 A. No.

3 Q. Not even a little bit?

4 A. Not even a little bit.

5 Q. You may be the first one to say that.

6 A. Not even a little bit. I mean, really, it just
7 didn't strike me. I mean, there is so much of this in the
8 paper. You could read this stuff all day long every day.
9 You'd go crazy.

10 Q. Yeah. Some of it is exactly on target in the
11 newspaper, isn't it?

12 A. Well --

13 Q. That's right. Now, you don't work for the
14 newspaper?

15 A. I don't even take the newspaper. It's day-old
16 news. It's hearsay.

17 Q. I had one tell us that they get Tyler's other
18 newspaper, "Thrifty Nickel."

19 A. "Thrifty Nickel."

20 Q. If you become a juror in any capital murder case,
21 one of the most important questions that you have to answer
22 as a juror is actually the first question. Did the
23 defendant commit any crime at all, okay? The second
24 question is going to be, if he did commit a crime, which
25 one? And the third one is, if I find that he committed a

1 crime, what ought to happen to him, okay?

2 Every time Ms. Sikes had to talk about
3 questions associated with a death penalty case, capital
4 murder, future dangerousness, murder plus, and all these
5 things, and now I had to talk about it as well, my
6 inclination is to say, "I wonder if this juror, after
7 hearing all this stuff about death penalty and future
8 dangerousness and punishment phase and all these things, if
9 they already think in this case that the defendant is
10 halfway guilty."

11 Now, you have not thought that, have you?

12 A. No, sir. Honestly, I hadn't.

13 Q. Because the big question becomes, rather than me
14 stand up each time and say -- every time they say "capital
15 murder," I don't stand up and say, "No, it's not," even
16 though I want to -- because this truly is a contest. I
17 expect there will be plea of not guilty, and you, as a
18 juror, are going to have to decide.

19 Knowing your personal beliefs about the death
20 penalty, my question is focused this way: If you're a juror
21 and you get to the part where you have to decide did the
22 defendant commit a crime and you realize in your mind, "Hey,
23 I think he is intentionally" -- not in this case; some other
24 case -- "I think the defendant in the case Mr. Haney is a
25 juror on, I think the defendant did commit a crime, but I

1 think it's just manslaughter; it's a lesser crime or murder,
2 an intentional crime, just something lesser than they
3 charged," could you find somebody guilty of only what they
4 did and not what they are charged with?

5 THE COURT: You mean, what was actually
6 proven beyond a reasonable doubt?

7 MR. HAWK: Yeah.

8 A. Than what was actually proven?

9 Q. (By Mr. Hawk) Yeah. I'm trying to figure out if
10 you could find somebody, if you were on a jury someday,
11 guilty of only what's been proven to you beyond a reasonable
12 doubt, whatever crime that is, okay?

13 A. I could.

14 Q. Even if it's not what they were originally charged
15 with?

16 A. Yeah, if I were so instructed.

17 Q. Because you may get that instruction from a judge,
18 because you, as a juror, may have honest questions. "Well,
19 I think he might have been guilty of this crime on the one
20 hand or maybe this crime on the other; I've got a question
21 about which of these two," and you're going to be given
22 instructions on how to deal with all that.

23 And if you get called to be a juror, the
24 Judge is actually going to tell you to find somebody guilty
25 only of what's been proven to you beyond a reasonable doubt,

1 even if it's a lesser crime.

2 Could you follow that instruction?

3 A. Yes.

4 Q. And then that goes right along with the punishment
5 range. You may have a punishment range given to you for
6 some lesser crime, which may be even less than you think a
7 defendant deserves.

8 Would you ever find somebody guilty of
9 something that wasn't proven to you beyond a reasonable
10 doubt just to get to that punishment range you think is
11 fair?

12 A. I hope not.

13 Q. You could probably see in your mind, at least in
14 one situation or two, where you might, right?

15 A. I don't know. It's a possibility.

16 Q. Right. Because, as a juror, you're going to be
17 instructed that you have to find somebody guilty of only
18 what's been proven to you beyond a reasonable doubt.

19 A. That's right.

20 Q. And if you find out that what you think has been
21 proven to you beyond a reasonable doubt doesn't carry enough
22 punishment, then you're stuck again in that dilemma that
23 you've got personally, right?

24 A. Yes, everybody is.

25 Q. Okay. When you said a minute ago to me, "You

1 know, I hope not" --

2 A. That's right. You hope you're fair, meaning judge
3 fair.

4 Q. I'll ask you the exact same question and see how
5 you're thinking about it, because I don't want you to feel
6 like I'm telling you what you have to answer. I don't want
7 you to say yes, because it's easier, or no, just because
8 it's hard or maybe. But this is -- again, I'm trying to
9 find out if the shoe fits. I'm not going to make it fit.
10 We've got to see.

11 If you're instructed by the Judge to find
12 somebody guilty only of what's been proven to you beyond a
13 reasonable doubt, but yet the punishment range for the crime
14 that you think the defendant committed beyond a reasonable
15 doubt isn't enough for you personally, could you still find
16 somebody guilty of that crime?

17 A. That don't really make much sense to me, what you
18 said.

19 Q. Well, that's not the first time I've heard that.

20 THE COURT: What he's asking you, Mr. Haney,
21 is, you're going to get an instruction from the Court that
22 you are only to convict a defendant of a crime that the
23 State has proven to you beyond a reasonable doubt that the
24 defendant committed. That's number one.

25 VENIREPERSON HANEY: Right.

KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 THE COURT: Can you follow that instruction?

2 VENIREPERSON HANEY: I can follow that
3 instruction.

4 THE COURT: So that if the defendant is
5 charged with capital murder, let's say by an indictment, but
6 the State puts on all of its proof, and the State only
7 proves to you beyond a reasonable doubt that the defendant
8 committed the offense of robbery, you would have an
9 instruction from the Court that you are only to convict the
10 defendant of what the State has proven the defendant guilty
11 of. That's basically what the instruction is going to come
12 down to.

13 Do you understand that?

14 VENIREPERSON HANEY: Yes, sir.

15 THE COURT: Can you follow that instruction?

16 VENIREPERSON HANEY: Yes, sir.

17 THE COURT: And there's going to be a further
18 instruction that if the defendant is charged with a higher
19 crime -- let's say that the defendant is charged with the
20 offense of capital murder, but the defendant only -- but the
21 defendant is proven guilty to you of the offense of murder,
22 but under the instruction, if you have a reasonable doubt as
23 to whether or not the defendant has been proven guilty of
24 capital murder or of murder, you're to resolve that in the
25 defendant's favor and only convict him of the offense of

1 murder.

2 Are you following me on that?

3 VENIREPERSON HANEY: I follow you on that.

4 THE COURT: Okay. Can you follow that
5 instruction of the Court?

6 VENIREPERSON HANEY: Yes, sir.

7 THE COURT: Okay. And what Mr. Hawk is
8 asking you is, can you follow that instruction of the Court
9 and only convict the defendant of what the defendant's been
10 proven guilty of, even if that offense that you believe the
11 defendant has been convicted of carries a lesser punishment
12 range than a higher offense? In other words, can you still
13 convict him only of what he's been proven guilty of?

14 VENIREPERSON HANEY: If that's what the Court
15 orders.

16 THE COURT: That's what the Court's going to
17 instruct you.

18 VENIREPERSON HANEY: Right.

19 THE COURT: Can you follow that instruction?

20 VENIREPERSON HANEY: Yes, sir, I can follow
21 that instruction.

22 THE COURT: Here's what it would amount to,
23 Mr. Haney. If you had an defendant indicted for capital
24 murder, and for capital murder, if a defendant is convicted
25 of capital murder -- if a defendant is convicted of capital

1 murder, he or she is going to receive either a life sentence
2 or the death penalty, but if the State comes in and only
3 proves that the defendant is guilty, let's say of the
4 offense of robbery, which carries a punishment range of two
5 to twenty, that if you can follow the Court's instruction
6 and only convict the defendant of robbery, which you've told
7 me that you can?

8 Are you going to say, "Well, even though the
9 State has convinced me that the defendant is guilty of only
10 robbery, I'm going to want to convict him of a higher
11 offense, even though I don't think he's guilty of it, just
12 so I can have a longer range of punishment"?

13 VENIREPERSON HANEY: No, sir.

14 THE COURT: In other words, can you follow
15 the instruction and you will only convict the defendant -- a
16 defendant of an offense that he has committed and then be
17 able to consider the full range of punishment of the offense
18 you've convicted the defendant of? Can you do that?

19 VENIREPERSON HANEY: Yes, sir.

20 THE COURT: Go ahead, Mr. Hawk.

21 A. I'm sorry. I just didn't understand your
22 question. It seemed like it just --

23 Q. (By Mr. Hawk) You know, let me tell you something.
24 You know, you've been sitting here for two hours and so have
25 I, Mr. Haney. I thank you for your patience.

1 MR. HAWK: We'll pass the venireperson.

2 THE COURT: Thank you, Mr. Hawk.

3 Mr. Haney, we are going to be able to let you
4 go ahead and leave this afternoon. What we're going to need
5 to do and what we will do is you'll get a call from the
6 Court's office tomorrow afternoon, probably somewhere up
7 around this time, and we will be able to let you know
8 whether or not you have been selected for this jury, okay?

9 VENIREPERSON HANEY: Okay.

10 THE COURT: Are you going to be around
11 tomorrow afternoon?

12 VENIREPERSON HANEY: Right. But I won't be
13 in town at this time.

14 THE COURT: Okay. That's okay. Well, let me
15 ask you this --

16 VENIREPERSON HANEY: Could you call me on my
17 cell phone?

18 THE COURT: Yes, sir. If you could give my
19 bailiff right there, Carleton, just give him your cell phone
20 number on the way out and the Court's office, I'll have my
21 office call you. It will be sometime -- it may be a little
22 bit earlier than this tomorrow afternoon to let you know
23 whether or not you've been selected to be on the jury, okay?

24 And just continue to be cautious at this time
25 in between now and when you get the call, and depending on

1 what the call is, we'll tell you what you need to do after
2 that.

3 But don't discuss the case with anyone or
4 read anything in the media, which it doesn't sound like you
5 normally do. But don't read anything in the media or listen
6 to any reports of the case or discuss anything about the
7 case with anyone, and we'll be in touch with you no later
8 than this time tomorrow afternoon to let you know,
9 Mr. Haney.

10 Thank you for your time, sir. And thank you
11 again for coming in early.

12 VENIREPERSON HANEY: Okay.

13 (Venireperson Haney leaves the courtroom.)

14 THE COURT: Before Mae Nelson comes in, I
15 had -- I have, I believe, in regard to Saturday, just to be
16 sure that before the calls are made and a bunch of people
17 are rescheduled -- in regard to Saturday, July the 24th, it
18 is my understanding that the State and the Defense have
19 reached an agreement pursuant to 35.05 to excuse jurors
20 scheduled for this coming Saturday, July the 24th, Juror
21 Juan Gonzales, Juror Michael Pate, and Juror Geoffrey
22 Baldwin; is that correct, Mr. Perkins?

23 MR. PERKINS: Those are all correct, YOur
24 Honor.

25 THE COURT: Do you agree with all those,

1 Mr. Beatty?

2 MR. PERKINS: Those are Jurors Number 101,
3 103, and 108 for the record, Judge.

4 THE COURT: Thank you. 101, 103, and 108 for
5 the record.

6 Is that the agreement with the State,
7 Mr. Harrison?

8 MR. HARRISON: It is, Your Honor.

9 THE COURT: Now, what the Court anticipates
10 doing -- that, obviously, leaving seven jurors scheduled for
11 Saturday, is trying to take those seven jurors and move them
12 to the jurors for Wednesday --

13 MR. PERKINS: That's fine.

14 THE COURT: -- which will be for Wednesday of
15 next week, which would be the 28th.

16 MR. HARRISON: That's fine, Judge.

17 THE COURT: Is that agreeable with the State?

18 MR. HARRISON: It is, Judge.

19 THE COURT: Is that agreeable with the
20 Defense, Mr. Perkins?

21 MR. PERKINS: It is, Your Honor, with the
22 understanding, obviously, that we won't make any strikes on
23 anybody until they are actually reached in order.

24 THE COURT: That is correct. That is the way
25 we will do it.

1 Is that agreeable with you, Mr. Beatty?

2 THE DEFENDANT: Yes, sir.

3 (Recess.)

4 (Venireperson Nelson enters the courtroom.)

5 THE COURT: Yes, ma'am. Just come around,
6 Ms. Nelson, and watch your step up right there. There you
7 go. And have a seat right there. You made that step a lot
8 easier than I do.

9 How are you this afternoon?

10 VENIREPERSON NELSON: Fine. How are you-all?

11 THE COURT: We're doing fine. Thank you.

12 We appreciate, first of all, you coming in
13 earlier from your originally scheduled -- from yesterday,
14 and you came on in earlier today at our request. It sort of
15 helped us fill up some time we had in here, so I appreciate
16 that very much, first of all, ma'am.

17 Second of all, this is the part of the voir
18 dire process we talked a little bit about when you were in
19 the big room called individual voir dire.

20 VENIREPERSON NELSON: Yes, sir.

21 THE COURT: And it's a process where one of
22 the attorneys representing the State of Texas are going to
23 ask you some questions. They're going to go through some
24 questions and ask you your views and opinions on some issues
25 that may be involved in the trial of a case such as this

1 one.

2 They're going to explain the procedures and
3 the law that governs the trial of a case like this, and
4 they're going to ask you about whether or not you can follow
5 the law that controls the trial of this type case, and
6 they'll have some other questions.

7 The main thing is that there is no right or
8 wrong answer to any question that they ask. You need to be
9 sure and whatever -- like if the question calls for a yes
10 answer, answer out yes; if it calls for a no answer, answer
11 out no or whatever answer it calls for.

12 Try to speak up loud enough for all of us to
13 hear you. Don't, like, nod your head yes or nod your head
14 no, because my court reporter, Kim, can't take down nods of
15 the head. And for the record, she has to have an answer
16 from you, okay?

17 VENIREPERSON NELSON: Okay.

18 THE COURT: Now, the questionnaire that you
19 filled out last time you were here, is there anything about
20 that that you need to add anything to?

21 VENIREPERSON NELSON: No.

22 THE COURT: Do you think you got it all
23 covered?

24 VENIREPERSON NELSON: I think I did.

25 THE COURT: If one of the attorneys asks you

1 a question and you don't understand what they're asking --
2 and, believe me, that could happen. You know, it could
3 happen. I may ask you something you don't understand what
4 I'm asking, too.

5 But if we ask some question, it's a little
6 confusing, don't hesitate to say, "Could you just state that
7 again; I don't really understand what you're asking me," and
8 we'll -- we'll restate the question for you.

9 VENIREPERSON NELSON: Okay.

10 THE COURT: Last Thursday or -- not last
11 Thursday now, a week ago last Thursday, I gave everybody in
12 the panel in the room an oath, and that oath still applies,
13 so your answers are under oath.

14 Do you have any questions for me or anything
15 you want to ask before we get started?

16 VENIREPERSON NELSON: No.

17 THE COURT: Well, just relax and just
18 understand there are no right or wrong answers. Both the
19 State's attorneys and the defense attorneys are just trying
20 to find -- just trying to find 12 fair and impartial jurors
21 that can keep their mind open, base a verdict on the
22 evidence that comes in at trial, and the laws given to
23 jurors by the courts.

24 So just listen carefully to their questions
25 and answer it, you know, as best as you can, okay?

KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 VENIREPERSON NELSON: Okay.

2 THE COURT: Okay. Thank you, Ms. Nelson.

3 MAE FRANCIS NELSON,
4 having been duly sworn as a member of the special venire,
5 was examined as follows:

6 VOIR DIRE EXAMINATION

7 BY MR. HARRISON:

8 Q. Ms. Nelson, how are you doing?

9 A. Fine. How are you doing?

10 Q. I'm doing well. Thank you very much.

11 My name is Brett Harrison. I'm the first
12 assistant district attorney here in Smith County. To my
13 left is April Sikes. We've been introduced to you before.

14 Do you recognize either of us?

15 A. Only from the last names. I remember faces.

16 Q. Only from last Thursday?

17 A. Yes.

18 Q. To my right is Tracy Beatty. He's the defendant
19 who's been charged and indicted by a Smith County grand jury
20 for the offense of capital murder. To his right is his lead
21 defense attorney, Robert Perkins. To Mr. Perkins's right is
22 Ken Hawk, also his defense attorney, working for the
23 Defense.

24 Do you recognize or think you're acquainted
25 with any of those three?

1 A. No.

2 Q. Okay. You gave us a -- really kind of a short
3 book that we got answers to these questions, and it really
4 kind of helped us focus on the areas that we want to talk
5 with you about. I'm going to go ahead and just jump right
6 in and ask you a few questions straight off this
7 questionnaire, if you don't mind.

8 And let me preface it by saying this: If
9 this were in any other setting, other than right here in
10 this type of case, I wouldn't be asking you these questions
11 because it wouldn't be any of my business.

12 A. Yes.

13 Q. So I apologize upfront for seeming like I'm maybe
14 prying into your business. I don't mean to be, but it's
15 just kind of the way the process works at this point.

16 I want to jump into the question about the
17 death penalty and what you think about the death penalty.
18 There was a question that asked how you felt about the death
19 penalty, and you indicated, "If all evidence is provided
20 with a doubt." I think that probably meant "without a
21 doubt"?

22 A. Yes.

23 Q. And then you would follow that up with a statement
24 that you were able to put yourself in that said, "I believe
25 the death penalty is appropriate in some cases." You went

1 on to say, "I'm very fair-minded and open-minded, also. I
2 don't persuade easily."

3 First of all, are those answers kind of still
4 the way you feel?

5 A. Yes.

6 Q. Okay. If I could get you to explain just a little
7 bit further to me about your feelings about the death
8 penalty and just anything else about the death penalty you
9 could -- you could kind of educate us on on your feelings
10 about it.

11 A. On my feelings?

12 Q. Yes, ma'am.

13 A. My feelings, as so stated, like I said before, if
14 that person did commit the crime and if there was enough
15 evidence to say that that person should, then I think he
16 should be put to death. If not, if there is a doubt in
17 there, then I think he shouldn't.

18 Q. So, basically, I think you're pretty in line with
19 the law. Some cases deserve the death penalty; some cases
20 don't.

21 A. Yes.

22 Q. If you were on a hypothetical jury and the State
23 proved somebody guilty beyond a reasonable doubt of the
24 offense of capital murder, and you were in the punishment
25 phase then of a death penalty case, and you had listened to

1 all the evidence -- and I'm going to kind of speed ahead a
2 little bit -- there are a couple of questions you answer in
3 the punishment phase of a death penalty case. You don't
4 just say "life" or "death."

5 A. Yes.

6 Q. Those are the only two options when the State is
7 seeking the death penalty. But you don't just checkmark a
8 box that says "life" or "death." You answer two questions.
9 And the way in which those questions are answered result in
10 either a life sentence or a death sentence being imposed,
11 okay?

12 A. Yes.

13 Q. If you were in a hypothetical case, you had found
14 somebody guilty of capital murder, and you answered that
15 first question, and then you went on and you answered the
16 second question in a way that you knew a death penalty was
17 being assessed, if you thought those were the appropriate
18 ways to answer a question, would you have any hesitancy at
19 all in answering them in such a way that you knew,
20 intellectually, a death penalty would be imposed?

21 A. No.

22 Q. Wouldn't be a problem for you?

23 A. No, wouldn't be.

24 Q. By the same token, if you believed they should be
25 answered in a way such as would require a life sentence be

1 imposed, would you have any hesitancy at all in answering
2 them that way?

3 A. No.

4 Q. Basically, what I'm hearing from you is you would
5 listen to the evidence, you would answer the questions the
6 way you felt they ought to be answered, irrespective of what
7 the punishment might be?

8 A. Yes.

9 Q. How long have you been in favor of -- because it
10 sounds like you believe in the death penalty --

11 A. Well, I do.

12 Q. -- as a punishment.

13 A. Yes.

14 Q. How long have you felt that way?

15 A. Almost all my life. I read things. I sort of
16 believe in it myself.

17 Q. Do you read things about the death penalty or
18 watch programs or talk with people about it?

19 A. Read, talk to people, just individual cases.

20 Q. Have you ever had a time in your life where you
21 didn't believe in the death penalty or weren't in favor of
22 it or were against the death penalty?

23 A. Sometimes, yes.

24 Q. Okay. Like tell me about those situations.

25 A. Like -- it's sort of hard to explain. Like

1 sometimes, you know, you'll read about a case, and the case,
2 you know, there was a death penalty, but then, to me, that
3 person did not warrant that. Maybe if he was sort of
4 mentally ill or proven mentally ill.

5 Q. Right. So maybe sometimes when someone is
6 mentally ill, they don't necessarily deserve the death
7 penalty?

8 A. Sometimes. Now, not all the time but sometimes.

9 Q. Other than like specific cases, has there ever
10 been a time period in your life where you just said, "Look,
11 I just don't think the death penalty is a very good idea"?

12 A. No.

13 Q. You've always been pretty much in favor of it?

14 A. Yes.

15 Q. Why do you think you're in favor of it? Kind
16 of -- a lot of people -- let me ask you this: A lot of
17 people say they grew up with their parents saying they were
18 in favor of it, and they just kind of pass that on to their
19 children. Some people said for religious reasons, they're
20 in favor of death penalty. Some people just said a life for
21 a life or an eye for an eye.

22 You know, there are lots of different --
23 death as a deterrent to crime. Some people say that if a
24 crime is heinous enough, you know, bad enough factually,
25 it's deserving of the death penalty.

KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 Where do you fall in there? Why do you think
2 you're in favor of it?

3 A. Well, if a crime has been committed and it's
4 hideous enough -- that's what I believe -- if it's hideous
5 enough, that person who committed that crime when he
6 shouldn't have, then I believe in the death penalty.

7 Q. So based on the facts of the case, you think --
8 that's one reason why you're in favor of the death penalty?

9 A. Yes, it is.

10 Q. If I made you legislator for the day and gave you
11 the choice, would you keep the death penalty as it is in
12 Texas, or would you get rid of it?

13 A. Keep it.

14 Q. Would you change it at all?

15 A. No.

16 Q. Do you believe it's applied -- from what you've
17 seen and heard and read, do you believe it's applied and
18 used appropriately in Texas?

19 A. Yes, I do.

20 Q. Do you think it's fairly applied?

21 A. Yes, warranted by the cases.

22 Q. Well, sure. Yeah, I understand. You've told me
23 about the mentally retarded issue, but just as a general
24 matter -- you know, I think you're answering my questions
25 very appropriately under the law, because not every case is

1 deserving of the death penalty.

2 A. No.

3 Q. Not every person is deserving of the death
4 penalty. Even if they're eligible, they may not be
5 deserving. Some people are. And I think that's what you're
6 telling us.

7 A. Yes.

8 Q. But just as a general, guiding principle, I think
9 what you're telling me is you'll listen to the evidence and
10 you'll judge each case on its own?

11 A. Yes.

12 Q. Any problem that you have at all with the fact
13 that -- with the possibility of sitting as a juror in a
14 death penalty eligible case?

15 A. No.

16 Q. Okay. Does it -- does it cause you any kind of
17 hesitation or concern to know that you might be a juror in
18 that type of case where you might be in control of answering
19 those questions that would result in either a life sentence
20 or a death sentence?

21 A. No.

22 Q. Okay. All right. Let me do this: Let me talk
23 with you about capital murder versus murder.

24 A. Okay.

25 Q. If I were to get a gun and shoot Ms. Sikes over

1 here ten times, and I thought about it ahead of time, and I
2 went ahead and did it --

3 A. Uh-huh.

4 Q. -- and I laughed about it, and I'm a bad person.
5 I've been to the penitentiary before, you know, maybe done
6 other crimes before in my life. And I laughed about the
7 fact that her ten-year-old son wasn't going to have a mother
8 anymore. Bad crime. As bad as I can think of, that is what
9 we call, in Texas, murder, okay?

10 A. Yes.

11 Q. The death penalty isn't an option in that case.
12 What we have is a range of punishment from five years to
13 ninety-nine years or life. Death isn't even an option in
14 that type of case because that's simply a murder case.

15 The legislature has said, "As bad as that may
16 be, that's a murder. We are going to make death a potential
17 punishment in a certain category of murders." And I like to
18 call it murder plus. It's murder plus something else that
19 makes it a capital murder.

20 To be a capital murder, the legislature has
21 said, if you kill more than one person in the same criminal
22 transaction; if you murder a police officer or a fireman in
23 the line of their duties; if you kill a child, murder a
24 child under the age of six; if you -- if you -- if I am paid
25 to commit a murder or if I pay somebody, kind of a hitman,

1 that can be a capital murder; or if I commit a murder in the
2 course of committing one of several felonies; if I commit a
3 murder in the course of committing a burglary or a robbery
4 or an arson or a kidnapping or a rape, that can also be a
5 case of capital murder.

6 You can see why it's different than what I
7 did to Ms. Sikes. It's murder plus something else. Do you
8 understand that? Do you have any problems with kind of the
9 legislature kind of separating those out?

10 A. No.

11 Q. When you have -- we've talked about it a little
12 bit, but when you have just a murder case, like what I
13 talked to you about, or any other kind of crime, you have
14 this range of punishment. If you find someone guilty of
15 those crimes, you have this range of punishment that you
16 place their punishment in.

17 When you have a capital murder case, when you
18 find someone guilty of capital murder and the State is
19 seeking the death penalty, there's only two options at the
20 punishment phase. There is life in prison or the death
21 penalty.

22 Life in prison -- we don't really have life
23 without parole in Texas. What we have -- some states do; we
24 don't. What a life sentence on a capital murder conviction
25 means in Texas is a defendant would have to serve

1 40 calendar years before he becomes eligible for parole.

2 So those are your two choices: Life in
3 prison or a death sentence, if somebody has been convicted
4 of capital murder and the State is seeking the death
5 penalty.

6 Does that make sense?

7 A. Yes.

8 Q. Anything about that that we've talked about that
9 I've explained and talked with you about that you have a
10 question on or want to talk about any further?

11 A. No.

12 Q. You're following what I'm talking about?

13 A. Yes.

14 Q. Because I'm trying to condense a lot of law,
15 trying to make it as short a period as I can.

16 A. Okay.

17 Q. I'll slow down. When she gives me that look, I
18 have to slow down.

19 Let me talk with you about just some general
20 principles of law, okay? These are general principles of
21 law that apply to any case, whether it's a speeding ticket
22 or a capital murder case, and these would apply to any
23 citizen who is charged with a crime.

24 And before I get to those general principles
25 of law that every citizen enjoys, let me ask you

1 specifically about a couple of individuals you had listed in
2 your juror questionnaire. You had indicated that there were
3 a couple of people that had had some dealings with the law.
4 I think your son -- is it a son, Stefan Arterberry?

5 A. Stefan.

6 Q. Stefan? Is he a son?

7 A. Yes.

8 Q. You indicated he had worked or does work at the
9 Bradshaw Unit?

10 A. He had.

11 Q. Do you recall when that was?

12 A. I think it was late '80s.

13 Q. Late '80s. Do you know how long he worked there?

14 A. Five years.

15 Q. What does he do now?

16 A. He works at Tyler Pipe.

17 Q. Do you know what he did there at Bradshaw?

18 A. No.

19 Q. Okay. Did he talk about it much with you?

20 A. No.

21 Q. Did he seem to enjoy it?

22 A. Yes, I guess he did.

23 Q. Anything about the fact that he used to be a
24 prison guard or work at that correctional facility that
25 would cause you any problems if you were sitting on this

1 kind of a jury?

2 A. No.

3 Q. Now, it looks like also there were -- that same
4 person and Ricky Nelson, also a son, that had had some, I
5 guess, theft by checks. You didn't really know when or
6 where; is that fair?

7 A. Yes.

8 Q. Do you know anything about either of those cases?

9 A. No.

10 Q. Do you know -- it said you're substantially
11 familiar with the facts or circumstances about the
12 experience, and you said yes, and that they were treated
13 fairly.

14 Now, obviously, you indicated you didn't know
15 when or where it happened, but was that in Smith County?

16 A. Yes.

17 Q. Do you know anything else, other than the fact
18 that they had theft by checks and they were handled in the
19 system and treated fairly?

20 A. No, I do not know anything.

21 Q. Okay. You do know they were treated fairly?

22 A. Yes.

23 Q. Based on either of those situations, do you have
24 any problem with the way they were treated ever by law
25 enforcement?

1 A. No.

2 Q. Or the courts just in general?

3 A. No.

4 Q. Defense lawyers or prosecutors?

5 A. No.

6 Q. Everything about it, to your knowledge, was
7 treated -- they were treated fairly?

8 A. Yes.

9 Q. They didn't have either of these two fine lawyers
10 representing them, did they?

11 A. No, not to my knowledge.

12 Q. Anything about that situation -- either of those
13 situations that would cause you any trouble?

14 A. No.

15 Q. Now, there is also -- there is someone named
16 Victor Clark, a nephew, who had gone to the pen. You didn't
17 know what type of case. Can you tell me about it?

18 A. He was a child. I say a child. He was a young
19 boy, got off on the wrong foot.

20 Q. I'm sorry. He did what?

21 A. Got off on the wrong foot, I guess, and he stayed
22 in there about 20 years, and now he's out and working.

23 Q. Now he's out and working?

24 A. Yeah. It's been, like, two years at the same job.

25 Q. Do you know what kind of case put him into prison?

1 A. Yes. I believe something about some car theft.

2 Q. Car theft?

3 A. Uh-huh.

4 Q. Was it here in Smith County?

5 A. Yes.

6 Q. Again, I would ask you, did either of these
7 lawyers represent him to your knowledge?

8 A. I don't think so.

9 Q. Do you know about how long ago?

10 A. I would say 20 years.

11 Q. It's been 20 years?

12 A. Uh-huh.

13 Q. Ms. -- no, it couldn't have been either one of us.
14 We haven't been around long enough.

15 A. Huh-uh.

16 Q. Maybe Judge Skeen may have been involved.

17 A. I don't know anything. I don't know.

18 Q. Let me ask you this: Do you know whether he was
19 treated fairly or have any idea whether he was treated
20 fairly or unfairly?

21 A. I don't know.

22 Q. Any reason to believe he was treated other than
23 fair?

24 A. I guess he was treated fair. I guess.

25 Q. Okay. He's never complained to you that he was

1 treated unfairly or anything like that?

2 A. No.

3 Q. Let me ask you, because you've got kind of both
4 sides of the issue, as you'll be able to see. You've got a
5 son who was a prison guard for several years, as well as
6 being involved in the criminal system as a defendant,
7 treated fairly. You've had both sides of it.

8 How do you feel about law enforcement
9 officers?

10 A. Fair. I still think it's fair.

11 Q. Do you feel like they do a good job, generally?

12 A. Generally, yes.

13 Q. I'm sorry. I don't mean to talk over you.

14 A. Uh-huh.

15 Q. I'm trying to speed things along.

16 A. Okay.

17 Q. Do you believe that they have a dangerous job,
18 police officers?

19 A. Sometimes, yes.

20 Q. Sometimes. Do you respect the job that they do?

21 A. Yes.

22 Q. That kind of leads into my first question, one of
23 these general principles of law.

24 A. Uh-huh.

25 Q. Everybody who comes into a criminal case who is

1 sworn in to tell the truth, the whole truth, and nothing but
2 the truth, they are witnesses in a case. Every witness, no
3 matter who they are, is deserving of the same opportunity at
4 credibility.

5 You can't just say, you know, Ms. Nelson, you
6 believe that police officers do a dangerous job, that they
7 do it for very little pay, very little public appreciation,
8 that you really respect the job that do; therefore, you're
9 going to give them more credibility than you would someone
10 else.

11 Or by the same token, a teacher, because I
12 respect the job teachers do and think that it's a very
13 admirable profession, I couldn't, as a juror, give them any
14 more credibility than I would any other juror just because I
15 appreciate the job that they do.

16 Does that make sense?

17 A. Yes.

18 Q. What you have to do to be qualified as a juror is
19 to say, "I'm going to wait, and despite what I think about
20 their profession, I'm going to wait to hear what they have
21 to say; then I'm going to judge their credibility."

22 A. That's true.

23 Q. "I'll wait and hear it, and then I'll start
24 judging."

25 Can you do that?

1 A. Yes.

2 Q. No matter who it is, whatever profession it is,
3 whether it's ten members of the clergy who come in or ten
4 police officers or ten plumbers, you could wait and then
5 judge their credibility after they start talking?

6 A. Yes, I can.

7 Q. All right. Let me tell you this: To be -- what
8 we're doing in this process, when I ask you questions or
9 when Mr. Perkins asks you questions, we're trying to find
10 out if you're qualified to be a juror in the case.

11 A. Yes.

12 Q. Okay. We are not talking about whether we want
13 you to serve as a juror or whether the Defense wants you to
14 serve as a juror, because, you know, after this whole
15 process, I may think, "You know, that's not a very good
16 juror for me," and the Defense may say the same thing.

17 All we are trying to do is say, are you
18 qualified? Then we choose whether we want to keep you or
19 not, okay? So keep that in mind, is that all we're trying
20 to do is to figure out if you're qualified to sit.

21 And to be qualified to sit is very different
22 than whether we want you or not. And to be qualified, you
23 have to keep three things in mind. As you sit here right
24 now talking with us, whether it's me or Mr. Perkins, we're
25 asking you hypothetical situations, because we can't give

1 you the facts and we can't give you the evidence. And as
2 you sit here right now, you don't know any of the facts or
3 the evidence.

4 A. No.

5 Q. So keep in mind that all these questions being
6 posed to you, you haven't heard one bit of evidence.

7 A. No.

8 Q. So you've got to say, "Look, I'm going to keep my
9 mind open, and before I judge something, I'm going to hear
10 the evidence, and then I'll make my decision," okay?

11 Can you do that?

12 A. Yes.

13 Q. You have to be able to follow instructions and the
14 law that comes from Judge Skeen. He'll instruct you as to
15 what the law is. You may have personal feelings about
16 things, and it's okay to have personal feelings about
17 things. You may feel very strongly about an issue, and
18 that's okay, too.

19 What you have to be able to do to be a
20 qualified juror is say, "I have these strong feelings about
21 this, and it may even be different than how the Judge
22 instructs me. My feeling may be over here, and the Judge
23 may tell me to do this." It's okay as long as you can put
24 aside your personal feelings and follow the law.

25 The law doesn't say you have to divorce

1 yourself from your feelings. It's okay to feel differently
2 than what the law tells you you have to do as a juror. You
3 just have to be able to say, "I'm going to follow the law,
4 whatever that is."

5 Do you think you can do that?

6 A. Yes.

7 Q. We've talked about witness credibility. Let me
8 talk about the fact that last Thursday, or Thursday a week
9 ago, the Judge read portions of the indictment to you.

10 So, obviously, whether a person has been
11 arrested or charged or convicted -- pardon me -- arrested,
12 charged, or indicted of a crime -- for a crime is not any
13 evidence of guilt.

14 Are you aware of that?

15 A. Yes.

16 Q. Because, obviously, the reason we're here and the
17 reason we're going to have a trial is to figure out if he's
18 guilty or not guilty.

19 A. Uh-huh.

20 Q. Simply being indicted for a crime is not evidence
21 of anything, and I'll tell you why. One of the -- there's a
22 lot of reasons. One of the reasons is, a defendant, any
23 defendant, has a presumption of innocence. We don't start
24 out here even with the defendant. The State starts beneath
25 the defendant. He starts out ahead of us because he's got a

1 presumption of innocence.

2 It's our burden of proof. We have to prove
3 him guilty beyond a reasonable doubt. You know, very --
4 well, probably no defendant has ever gone to the grand jury
5 and said, "Please indict me so that we can have a trial so I
6 can defend myself," because he doesn't have to. He's got a
7 presumption of innocence. That's why an indictment is not
8 any evidence of guilt.

9 The other reason is this: A grand jury
10 proceeding is very one-sided. Members of the District
11 Attorney's Office present evidence, present witnesses. The
12 grand jury can hear from a defendant but usually doesn't.

13 If a defendant testifies, which he doesn't
14 have to do, his lawyer is never inside the grand jury room.
15 He's not entitled to be inside the grand jury room, so there
16 is no cross-examination. There is nothing like that.

17 The grand jury simply finds probable cause.
18 Means that a defendant -- there's probable cause that a
19 defendant committed a crime. Now go have a trial.

20 For all those reasons, very low standard of
21 proof, very low. If probable cause is down here
22 (indicating), beyond a reasonable doubt is up here
23 (indicating), right? For all those reasons, the fact that
24 someone has been indicted for a crime is absolutely no
25 evidence of guilt.

KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 You understand what I'm talking about?

2 A. Yes.

3 Q. Do you agree with that?

4 A. Yes.

5 Q. Think that's the way it ought to be?

6 A. Yes.

7 Q. That presumption of innocence, do you agree with
8 that?

9 A. Yes.

10 Q. Do you think all citizens should have that
11 presumption of innocence?

12 A. Yes.

13 Q. And that the defendant should start above the
14 State?

15 A. Yes.

16 Q. Okay. Because we're not talking about an even
17 race, you know, because a defendant has that presumption,
18 and it's up to us to present evidence to prove him guilty.

19 A. Yes.

20 Q. Which ties into another general principle of law
21 that defendants are entitled to. We have the burden of
22 proof.

23 A defendant and his lawyers can sit over
24 there mute. They don't have to say a word. They don't have
25 to question witnesses. They don't have to give an opening

1 statement or a closing statement. They don't have to make
2 argument or ask any questions at all.

3 You know why? Why don't they have to do
4 anything?

5 A. Because he's innocent until proven guilty.

6 Q. Until proven guilty. He's got the presumption of
7 innocence.

8 Now, when I say "he," he as a defendant.

9 A. Yes.

10 Q. Any defendant.

11 A. Uh-huh.

12 Q. These are fine lawyers. I don't believe that they
13 would ever do that. But in a case, all a defendant and his
14 lawyers have to do is show up on time and sit quietly and
15 politely, and they've done their job.

16 And if the State brings in a witness, ten
17 witnesses, or a hundred witnesses, and we bring hundreds of
18 exhibits, if we don't prove somebody guilty beyond a
19 reasonable doubt, just because they didn't do anything is
20 meaningless, because they don't have to. They don't ever
21 have to do anything.

22 A. Right.

23 Q. Why?

24 A. Because he's presumed innocent until proven
25 guilty.

1 Q. That's right. That's right.

2 And I'll tie it into something else. He's
3 presumed innocent. We have the burden of proof. They never
4 have to do anything, and we have to prove it beyond a
5 reasonable doubt, so let's talk about beyond a reasonable
6 doubt.

7 I think in your questionnaire you indicated
8 that you could find someone guilty and believe the death
9 penalty was appropriate, if all evidence was provided -- and
10 I think what you indicated should have been "without a
11 doubt"?

12 A. Uh-huh .

13 Q. There is one key word that you left out of that
14 question, and it's "reasonable." Because the law says and I
15 think you'll be instructed that the law in the reasonable
16 doubt -- there's no definition of what reasonable doubt is.
17 It's whatever it means to you and to your fellow jurors,
18 okay?

19 A. Okay.

20 Q. But I'll tell you this: The instruction that I
21 think you'll get from the Court says that the State doesn't
22 have to prove something to you beyond all doubt. We don't
23 have to remove all possible doubt. We have to prove a case
24 beyond a reasonable doubt.

25 Let me ask you this just as kind of a me and

1 you talking. Is there anything I could prove to you beyond
2 all doubt, to a hundred percent certainty?

3 A. No.

4 Q. Probably not, is there?

5 A. No.

6 Q. Because why -- why couldn't I prove something to
7 you beyond all doubt?

8 A. Because you are trying to state the facts.

9 Q. Okay.

10 A. And stay with the facts, and then it will weigh
11 itself out eventually.

12 Q. Sure. For me to prove something to you beyond all
13 doubt, what would you have to do?

14 Let me ask you this: Did you -- did you
15 drive here today?

16 A. I don't drive.

17 Q. Okay. You didn't drive. Let me ask you this:
18 Let's say -- let's say you brought a purse with you today.
19 I don't know if you did or not, but let's say you brought a
20 purse, and let's say when you got called in from outside,
21 you didn't bring your purse in with you, you left it on the
22 bench out there, okay?

23 A. Okay.

24 Q. If I said to one of the deputies, Deputy Clark
25 here, "Deputy Clark, go make sure her purse is still out

1 there," and it's just a few steps, right, it's just a very
2 short ways out there, he walked out there, he saw it, and he
3 came back, and I put him under oath, and he testified, "Yes,
4 sir, Ms. Nelson's purse is right out there, right where she
5 left it," do you know that it's still there beyond all doubt
6 whatsoever? I mean, has that been proven to you beyond all
7 doubt, to a hundred percent certainty?

8 A. No.

9 Q. No. Because you haven't seen it, right? I mean,
10 you would probably take his word for it.

11 A. Yes.

12 Q. The fact of the matter is, you hadn't seen it.

13 A. No.

14 Q. So there is still some doubt?

15 A. Yes.

16 Q. Now, in reality, do you believe it beyond a
17 reasonable doubt? I mean, it just took him two seconds to
18 go out there and look, and he reported right back.

19 A. Yes, it could easily.

20 Q. So you see the difference between being able to
21 prove something beyond all doubt and beyond a reasonable
22 doubt?

23 A. Yes.

24 Q. Let me give you another example. This one I
25 actually just heard during this process, and I like it.

1 Let's say it's raining outside, and my job,
2 as a prosecutor, is to prove to you, as a juror, that it is
3 raining outside, okay? So I bring someone in off the
4 street, and they testify that the reason they're soaking wet
5 is because they just walked outside in the rain before they
6 came into the courthouse.

7 And I bring Mark Scirto -- I don't know if
8 you watch the news, but he's a weatherman, a meteorologist.
9 I bring him and I say, "Mr. Scirto, you're a meteorologist.
10 Is it raining outside?" He said, "Yeah, it's supposed to be
11 raining, thunderstorms all day, all weekend, actually."

12 Now, you didn't look outside, but have I
13 proven to you beyond a reasonable doubt it's raining?

14 A. Yes.

15 Q. Sure. So that's kind of the difference. You
16 don't have to see something, because the law says that, you
17 know, I don't have to prove something beyond all doubt but
18 just beyond a reasonable doubt.

19 Now, you know, there are other possibilities,
20 right? In my proving it was raining situation, you know,
21 that person off the street who came in and said it was
22 raining, and he had been soaking wet, he could be lying to
23 you. What could have happened is, it could have been sunny
24 outside, and someone could have thrown a bucket of water on
25 him. That's a possibility, right?

1 A. Right.

2 Q. But it's not a reasonable possibility, right?

3 A. Right.

4 Q. You kind of understand where we are on beyond a
5 reasonable doubt?

6 A. Yes.

7 Q. Do you think that's a fair standard, that we have
8 to prove someone guilty beyond a reasonable doubt?

9 A. Yes.

10 Q. Okay. Would you hold us to that burden?

11 A. Yes.

12 Q. Now, I'll tell you this: Standard of proof of
13 beyond a reasonable doubt is the burden of proof that we
14 have, the State -- and, remember, the Defense never has a
15 burden. We have that on any criminal case, whether it's a
16 speeding ticket up to a capital murder.

17 And you might say, "Gosh, I think a capital
18 murder is more serious than a speeding ticket, so I think I
19 could raise the burden on that, or I think I could lower it
20 on a speeding ticket."

21 But what the law says is, "Look, one may be
22 more serious than another, but that doesn't change the
23 burden of proof. It's always on the State, and it's always
24 the same, whether serious or not serious, you know, or one
25 is more serious than the other. It stays there. It doesn't

1 move depending on the crime. And the State either meets it,
2 or they don't every time, you know, whether it's a speeding
3 ticket or capital murder."

4 Does that seem fair?

5 A. Seems fair.

6 Q. Can you hold us to that burden and not lower or
7 raise the burden depending on the type of crime or how
8 serious the crime may be?

9 A. Yes.

10 Q. Because, obviously, I've given you two extreme
11 examples of a death penalty case and a traffic ticket, a
12 speeding ticket. And if you're telling me that you're not
13 going to lower the burden on a speeding ticket or raise the
14 burden on a death penalty case, that's exactly what the law
15 says. It's the same no matter what.

16 A. Yes.

17 Q. Let me talk to you about the Fifth Amendment
18 right. Have you heard of the Fifth Amendment?

19 A. I did.

20 Q. You know that a person cannot be forced or
21 compelled to testify against themselves, right?

22 A. Yes.

23 Q. Why do you think that is?

24 A. Because what he say might incriminate his own
25 self.

1 Q. It might. And you know what else he has? What
2 else does he have that makes sense why he wouldn't have to
3 get up there on that witness stand and testify, any person
4 charged with a crime? What's the one thing that they have
5 that tells you they're innocent?

6 A. He has the right to be proven that he's --

7 Q. Right. He's got the presumption of innocence, so
8 he's got the presumption already.

9 A. Yes.

10 Q. He doesn't have to get up there on that witness
11 stand and say it again. He's already got it. And what
12 burden does any defendant have in a criminal trial?

13 A. None.

14 Q. None.

15 A. It's the State.

16 Q. That's right. He doesn't have to do anything.

17 A. That's right.

18 Q. Figuratively speaking, a defendant can look over
19 at me and say, "You brought the charges. You prove it."

20 A. That's right.

21 Q. "I'm not going to do anything except sit here
22 politely." Do you think that's fair?

23 A. It is fair.

24 Q. You know -- you have children?

25 A. Yes.

1 Q. Have you ever had a situation when your children
2 were younger when maybe a fight broke out or an argument
3 broke out and you wanted to get to the bottom of things?

4 A. Yes.

5 Q. How did you do it? What did you do?

6 A. Listened to both sides.

7 Q. Sure. You know, here's the thing. It's okay to
8 be curious to hear both sides to a story, because that's the
9 way we're raised.

10 A. Yes.

11 Q. I like to say in my house, even though some people
12 cringe when I say it -- in my house, there is no Fifth
13 Amendment right, because I can compel my five-year-old to
14 testify against himself, and it's pretty easy. I can compel
15 my five-year-old to testify against his co-defendant, his
16 two-and-a-half-year-old brother.

17 So in my house, I can compel testimony,
18 probably the same way you did in your house, right?

19 A. Right.

20 Q. The law recognizes people raise their kids that
21 way. It's the way we operate as parents, so it's okay to be
22 curious to hear both sides in your home, and it's okay to be
23 curious in a courtroom.

24 What the law says is, "Look, you can be
25 curious. What you can't do is be so curious to hear both

1 sides to a story that you're going to put some burden on the
2 Defense, that you're going to require his testimony."

3 Does that make sense?

4 A. Yes.

5 Q. It's okay to be curious. You just can't require
6 it. You can't consider a defendant's silence for any
7 purpose whatsoever.

8 A. Yes.

9 Q. Because, again, it always goes back to the
10 presumption of innocence. He's got no burden; we've got the
11 burden, right?

12 A. Right.

13 Q. Can you follow that instruction?

14 A. Yes.

15 Q. If a defendant chooses not to testify, it doesn't
16 make the State's witnesses any more credible or more
17 believable. It doesn't make our case any better, right?

18 A. Right.

19 Q. Because it doesn't affect anything. You can't
20 consider it for any reason, right?

21 A. Right.

22 Q. Will you agree to do that?

23 A. Yes.

24 Q. Let me talk to you about -- we've talked about the
25 fact that an indictment has been returned for the offense of

1 capital murder. There are, under the law, things called
2 lesser included offenses, so let me talk to you about those.
3 Envision kind of a ladder, okay?

4 In a hypothetical case, you might have --
5 remember, capital murder is murder plus something.

6 A. Yes.

7 Q. You might have a capital murder charge where it's
8 murder in the course of committing a rape.

9 A. Uh-huh.

10 Q. Okay.

11 A. Yes.

12 Q. And in that hypothetical case, you might have
13 plenty of evidence about the murder, a murder occurred. You
14 might hear from five witnesses that a defendant confessed to
15 committing the murder.

16 You've got no doubt at all about the murder,
17 but you might not be convinced beyond a reasonable doubt
18 about the rape. You might have heard some evidence of the
19 rape but not enough to get you over that beyond a reasonable
20 doubt, right?

21 A. Right.

22 Q. So what do you do at that point? You've got the
23 charge -- the indictment for capital murder. You believe
24 the murder beyond a reasonable doubt. You do not believe
25 the rape beyond a reasonable doubt.

1 What do you do with that capital murder,
2 guilty or not guilty?

3 A. Say guilty.

4 Q. Because the trick of this is, the murder plus to
5 make it capital murder, remember?

6 A. Yes.

7 Q. You've got to have murder in the course of
8 committing the rape. So you believe the murder occurred,
9 but you don't believe beyond a reasonable doubt about the
10 rape, so you don't have the plus, right?

11 A. Right.

12 Q. So for that, when it's charged capital murder, you
13 would have to say not guilty, not guilty to capital murder,
14 because "I believe the murder, but I don't believe the
15 rape." You have to have the murder plus the rape to make it
16 a capital murder, and you don't have that, do you?

17 A. No.

18 Q. And remember, keep in mind always when we're
19 talking about these questions, the burden of proof is right
20 here, and it's proof beyond a reasonable doubt, and if you
21 don't find someone guilty beyond a reasonable doubt ever,
22 it's always not guilty.

23 A. Okay.

24 Q. So you've got the murder that you believe.

25 A. Yes.

1 Q. You don't believe beyond a reasonable doubt the
2 rape, so you've found him not guilty for capital murder. So
3 the law says there are these lesser included offenses. You
4 could have murder as a lesser included offense, or you could
5 have manslaughter as a lesser included offense.

6 So in my situation, my hypothetical I've
7 given you, you don't believe the capital murder because you
8 don't believe the rape part, right?

9 A. Right.

10 Q. But you did believe there was sufficient evidence
11 to prove murder beyond a reasonable doubt, so you start
12 considering those lesser included offenses, and you get
13 there and you see murder. Well, you believe it beyond a
14 reasonable doubt, so what do you do? Do you find him guilty
15 of that?

16 A. Yes.

17 Q. The point is, the law says you can only find the
18 defendant guilty of what you believe the State proved beyond
19 a reasonable doubt. If I don't prove capital murder beyond
20 a reasonable doubt, you must find them not guilty.

21 A. Yes, sir.

22 Q. But if I do prove something else, some lesser
23 offense, let's say manslaughter. Say you don't believe
24 murder. You don't believe it was an intentional or knowing
25 murder. You only believe it was reckless.

1 Let's say, I pulled out a gun, and I was just
2 kind of cleaning it, and I shot April Sikes. That's the
3 evidence that you heard. Even though I was maybe charged
4 with capital murder, you didn't believe it was an
5 intentional murder. You didn't hear enough to prove that I
6 had raped Ms. Sikes, so it's not guilty of capital murder,
7 right?

8 A. Right.

9 Q. To find murder, it would have to be intentionally
10 or knowingly killing Ms. Sikes, and you don't believe that
11 either. You believe it was simply reckless. So you find
12 not guilty to the murder, right?

13 A. Right.

14 Q. So you keep going down until you find one that
15 fits, if you do. So in that situation, you might find that
16 because I recklessly killed Ms. Sikes, I'm guilty only of
17 manslaughter.

18 Does that make sense?

19 A. Yes.

20 Q. Taking it one step further, you might not find me
21 guilty of anything because you may think, "Look, the State
22 charged him with capital murder, but they didn't prove
23 anything. They didn't prove -- we wasted two weeks here."

24 A. Uh-huh.

25 Q. They didn't prove him guilty of anything, so you

1 would find him not guilty, right?

2 A. That's right.

3 Q. Just keep in mind they're only guilty of what we
4 prove beyond a reasonable doubt.

5 A. Okay.

6 Q. Talking about those lesser offenses, like a murder
7 or a manslaughter or any other case, we talked about this,
8 that there is a range of punishment, because, in Texas, we
9 have what's called -- it's a big word -- it's a bifurcated
10 trial system.

11 What that means is we have two phases of
12 trial. We have a guilt/innocence phase, and we have a
13 punishment phase. In that guilt/innocence phase, it's
14 real -- the evidence that you'll hear is real limited. It
15 applies only to and relates only to whether someone is
16 guilty or not guilty, right?

17 A. Right.

18 Q. The way it should be. Because if you start
19 throwing in all these other extraneous things, you're going
20 to start losing focus on the real issue. And the real issue
21 of that phase is, did he do it or did he not?

22 A. Yes.

23 Q. So let's say, in a hypothetical case, you find
24 someone guilty beyond a reasonable doubt of something,
25 murder, okay? So you found them guilty beyond a reasonable

1 doubt of murder.

2 So then you move into a punishment phase, and
3 at that point, you're no longer worried about whether he did
4 it or didn't do it, because you found him guilty. Now
5 you're trying to figure out where on that range of
6 punishment he fits, anywhere from five years or ninety-nine
7 years or life, right?

8 A. Okay.

9 Q. Anywhere in that punishment phase. So you could
10 hear in a punishment phase of a trial additional evidence
11 that goes towards what's appropriate, what's an appropriate
12 sentence? Where on this range of punishment does this
13 particular defendant fit?

14 So you can imagine the types of evidence you
15 might hear to help you decide where on the range of
16 punishment he fits. What's appropriate, five years in
17 prison, fifty years in prison, life in prison? You don't
18 know until you hear all the evidence, right?

19 A. Right.

20 Q. So you've got to listen to all the evidence. And
21 you might hear evidence of a prior criminal history, whether
22 the defendant has been to the penitentiary before, how he
23 acted while he was in the penitentiary, whether he was on
24 parole, and if so, how he performed on parole, what he did
25 while he was on parole, whether he ever used drugs or dealt

1 drugs or had a drug problem. You might hear psychiatric or
2 psychological testimony.

3 All those things could help you, if they do,
4 in kind of setting where in that range of punishment a
5 defendant would fit.

6 Do you see that?

7 A. Yes.

8 Q. And what the law says is, "Look, Ms. Nelson, as a
9 juror in a hypothetical case, you just can't say, you know,
10 it's a murder case, so I'm automatically going to give a
11 life sentence or five years. You have to keep an open
12 mind."

13 Let me give you an example of why you have to
14 have an open mind. What do you think of when I say
15 "murder"? What kind of case?

16 A. Criminal case.

17 Q. Sure. Criminal. Think of violence?

18 A. Yes.

19 Q. Be a real bad person?

20 A. Not necessarily.

21 Q. Okay. Well -- and that's right, because it takes
22 all -- there can be all kinds of people who commit all kinds
23 of murders.

24 A. Yes.

25 Q. The murder I gave you the first time, I think, was

1 me killing Ms. Sikes and laughing about it and kicking her
2 and laughing about her son not having a mother. Obviously,
3 that's a pretty heinous murder.

4 A. Yes.

5 Q. You might have a situation where you have a
6 75-year-old man and woman married for 50 years. Maybe the
7 wife's in the hospital with a terminal disease. She's in a
8 lot of pain, and he can't live with it. He can't see her in
9 pain. She's only got a few weeks to live, but they're going
10 to be painful. So he unplugs her from life support.

11 That's the intentional taking of another
12 human life without legal justification. That can be murder,
13 also.

14 A. Yes.

15 Q. You can see how different those two murders are.

16 A. Yes.

17 Q. And that's why we have a range of punishment, and
18 that is exactly why, on any question we're asking you, you
19 have to keep an open mind.

20 A. Yes.

21 Q. Because, you know, when I first say "murder," you
22 might think, "Oh, gosh, I could never consider five years in
23 prison for a murder." But now that you've seen that there
24 can be all kinds of people in all kinds of circumstances,
25 you could see that that could be something you might

1 consider.

2 So the law says, "Look, Ms. Nelson, keep an
3 open mind, wait to judge until you hear the evidence on any
4 issue, whether it's guilt/innocence or whether it's where on
5 a range of punishment a person fits."

6 Can you do that?

7 A. Yes.

8 Q. Anything to this point that we've talked about
9 that I need to clarify or repeat or rephrase that you have a
10 question about?

11 A. No.

12 Q. All of these instructions and these general
13 principles of law, if you're instructed by the Court as to
14 what we've talked about, do you think you could follow those
15 Court's instructions?

16 A. Yes.

17 Q. Okay. Do you have any problem with any of those
18 principles of law we've talked about?

19 A. No.

20 Q. Okay. Then let me get us to a hypothetical
21 capital murder case, and you're on the jury, okay? Now,
22 keep in mind this is a hypothetical case, okay?

23 A. Yes.

24 Q. To be in a -- let's say in this hypothetical case,
25 you have heard the evidence, you've deliberated, and you, as

1 a jury, have found a defendant guilty of the offense of
2 capital murder, okay? And this is a case where the State is
3 seeking the death penalty.

4 So you listen to the evidence and you vote
5 you believe beyond a reasonable doubt that he's guilty, so
6 you find him guilty, right?

7 A. Right.

8 Q. Now, if you believe -- if you did not believe
9 beyond a reasonable doubt that he was guilty, you wouldn't
10 find him guilty; you would find him not guilty.

11 A. Not guilty.

12 Q. In this case, we're in the punishment phase.
13 You've found him guilty. We've talked about those two
14 questions that you're going to be asked, right?

15 A. Right.

16 Q. You understand now probably that there's not a box
17 where you check "life" or "death."

18 A. Yes, right.

19 Q. We've got these two special issues, is what we
20 call them. They're really questions. And what you have to
21 do is you have to answer those questions, and the way in
22 which you answer them will result in either that life
23 sentence being assessed or a death sentence being assessed.

24 Now, what you can't do to be qualified is
25 say -- to be qualified to sit as a juror, you can't say,

1 "You know, I found someone guilty of capital murder. I
2 found someone guilty of intentionally taking the life of
3 another human being in the course of doing something else,"
4 that plus part.

5 So the law says you can just automatically
6 say, "I found them guilty of that. I'm always going to
7 answer these special issues in a way that results in a death
8 penalty." What the law says is, "Look, you've got to keep
9 an open mind and treat these questions on their own. Look
10 at the evidence and then answer them, whatever way you
11 choose to answer them, but look at them on their own."

12 Is that fair?

13 A. That's fair.

14 Q. Because like we said, there are -- in a capital
15 murder case, there are people who could be -- and I think
16 you answered it this way in your questionnaire -- people who
17 are eligible for the death penalty who might not be
18 deserving of the death penalty; is that fair?

19 A. That's fair.

20 Q. So you've got those two special issues. Take a
21 look at that first special issue that's up there in front of
22 you. Do see which one I'm talking about? It should say
23 Special Issue Number 1, I think.

24 A. Yes.

25 Q. Okay. Take a chance and read that to see, if you

1 would.

2 A. (Complies.)

3 Q. Did you have a chance to get through that one?

4 A. Yes. Uh-huh.

5 Q. That's the one that reads, is there a probability
6 that the defendant would commit criminal acts of violence
7 that would constitute a continuing threat to society, right?

8 A. Right.

9 Q. Basically, what we refer to that -- we lawyers
10 kind of talk about that as a future danger question. You
11 can see what it's asking. Is there a probability that the
12 defendant would commit criminal acts of violence and would
13 constitute a continuing threat to society?

14 First of all, do you think that's a good
15 question to ask? When you're talking about people who may
16 be eligible for the death penalty, but you're having to
17 winnow it down to those who are deserving of the death
18 penalty, is that a good question?

19 A. Yes.

20 Q. Pretty fair question to want to know the answer
21 to, isn't it?

22 A. Yes, it is.

23 Q. Let me just talk about a few of the words in
24 there. First of all, you see that word "probability"?

25 A. Yes.

1 Q. You know the difference between possibility and
2 probability?

3 A. Yes.

4 Q. It's possible George Bush is going to walk through
5 this door?

6 A. Yes.

7 Q. It's not real probable, though, is it?

8 A. No.

9 Q. All right. That the defendant would commit this
10 phrase "criminal acts of violence." Now, that doesn't say
11 "felony acts of violence" or "misdemeanor acts of violence"
12 or commit murder or capital murder or rapes or raping or
13 stabbing. It just simply says "criminal acts of violence."

14 And I don't think you're going to get a jury
15 instruction on what that means, a definition of what that
16 means, so it means whatever it means to you. So whatever
17 you believe is a criminal act of violence, whether that
18 means a -- you know, whatever it means to you.

19 What does a criminal acts of violence mean to
20 you? I mean, just examples of it.

21 A. Of someone doing something hurtful to someone
22 else, bodily harm.

23 Q. Sure. Bodily harm, doing something hurtful to
24 someone. Whatever it means to you.

25 And then it goes on to say, "That would

1 constitute a continuing threat to society." Now, let's talk
2 about the term "society," because you've had a son who has
3 worked inside the penitentiary as a prison guard, right?

4 A. Right.

5 Q. And you've had somebody -- and I can't remember
6 now who it was -- who actually was an inmate in a prison?

7 A. Yes.

8 Q. And that was a cousin, I think.

9 A. Nephew.

10 Q. Nephew. So you've had an inmate relative, and
11 you've had an inmate who actually was a prison guard. So
12 you know that there are inmates in the prison; there are
13 guards; there are doctors, nurses, librarians, food staff
14 people, wardens, all kinds of people who work inside a
15 penitentiary.

16 A. Yes.

17 Q. So when we talk about society, can you kind of
18 see -- what do you see society as?

19 A. I see society as the community where you live,
20 neighboring counties, cities, towns.

21 Q. Okay. And I think that's probably fair. When you
22 first talk to somebody about what society means, it's
23 generally where they live.

24 A. Uh-huh.

25 Q. This, again, is an example of one of those words I

1 don't think you'll get a definition on. I think it's -- or
2 I know it will be left up to you to determine what you
3 believe to be society.

4 And let me ask you this: Do you think that
5 inmates who are incarcerated in prisons deserve protection?

6 A. Yes.

7 Q. Do you think the guards deserve protection?

8 A. Yes.

9 Q. And doctors who work there and librarians and food
10 staff, people -- everybody there deserves protection, would
11 you agree?

12 A. Yes.

13 Q. Would you exclude prison guards, for instance,
14 from your definition of society?

15 A. No.

16 Q. Would you exclude inmates from your definition of
17 society?

18 A. No.

19 Q. Again, I'm not trying to tell you what is or is
20 not society. I'm just trying to get you to think about --
21 I'm just trying to get you to --

22 THE COURT: I'm sorry. Go ahead.

23 Q. (By Mr. Harrison) I'm just trying to get you to
24 think about what you mean by society and what it means to
25 you. And you would not exclude those groups of people from

1 society, because everybody needs protection, right?

2 A. Yes.

3 Q. So you look at that question -- after you found
4 someone guilty of the offense of capital murder, you look at
5 that question on its own, and you evaluate the evidence that
6 you've heard both on the guilt/innocence phase, as well as
7 the punishment phase, and you look at that question.

8 Now, the State has the burden of proof, like
9 we do all the time. We have the burden of proof, and we
10 have to prove this answer to you beyond a reasonable doubt.

11 A. True.

12 Q. If we prove it to you beyond a reasonable doubt,
13 could you put yes, "Yes, I do believe there is a
14 probability -- that it's been proven to me beyond a
15 reasonable doubt there's a probability that the defendant
16 would commit criminal acts of violence that would constitute
17 a continuing threat to society"?

18 A. Yes.

19 Q. If we failed to prove it to you, could you answer
20 that no?

21 A. Yes.

22 Q. All right. Because you'll look at it on its
23 own --

24 A. Yes.

25 Q. -- independent of finding somebody guilty, because

1 you understand that just simply finding them guilty doesn't
2 make them a future danger?

3 A. That's right.

4 Q. You've got to look at that on its own.

5 A. Yes.

6 Q. Let's say that you've answered that after looking
7 at it independently, "Yes, I do believe there is probability
8 of him being a future danger." You move on to that second
9 special issue.

10 Go ahead and read that to yourself, if you
11 would.

12 A. (Complies.)

13 Q. Okay. This one, you can tell a lawyer wrote this,
14 because it's real wordy, but let me try and break it down.
15 Basically -- and this is the one that says, "Taking into
16 consideration all the evidence, including the circumstances
17 of the offense, the defendant's character and background,
18 the personal moral culpability of the defendant, is there a
19 sufficient mitigating circumstance or circumstances to
20 warrant that a sentence of life imprisonment rather than a
21 death sentence be imposed?"

22 First of all, do you think you kind of
23 understand what that question is asking?

24 A. Yes.

25 Q. We refer to that as the mitigation question.

1 Mitigation can be defined as lessening a person's moral
2 blameworthiness.

3 A. Yes.

4 Q. So what you have to look at as a juror is say,
5 "Again, I'm looking at it independent of finding someone
6 guilty. I'm looking at it independent of already finding
7 them to be a future danger, probability of them being a
8 future danger. I'm going to look at this one on its own.
9 I'm going to look at all the evidence I've heard."

10 Now, this one is a little bit different,
11 because there is no burden of proof. The first time and the
12 only time there is not a burden of proof on the State, okay?
13 Nobody has to bring you evidence of this. It's either there
14 or it's not. And the Defense, of course, has no burden,
15 because they never do.

16 So what you do is you look at and you say,
17 "I've already found someone guilty of capital murder. I've
18 found them probably to be a future danger. Now, I'm
19 thinking to myself, and I'm looking at all the evidence, and
20 I'm saying to myself, 'Is there one thing or are there many
21 things that I think is mitigation, something that lessens
22 the moral blameworthiness of a defendant?'"

23 So, first of all, you say, is there any,
24 okay? It's a two-step process. And I'll tell you this:
25 There is not going to be -- you, as a juror, might have an

1 opinion as to what mitigation is that -- you may find
2 something to be mitigation that all the other jurors say,
3 "No, it's not. It's something different entirely." Y'all
4 don't have to agree on what mitigation is. It's what it
5 means to you and your other jurors.

6 And you might look and you might not find
7 any. You might find zero mitigating circumstances. Your
8 juror next to you might find one thing that's mitigation.
9 The person next to that person might find ten things that
10 are mitigation.

11 So first, you identify whether there is
12 mitigation, and if there is, you go to that second step, and
13 that's where you focus on the word "sufficient." Is there
14 some mitigation that is sufficient, important enough, to
15 meet to warrant a life sentence instead of a death sentence?

16 A. Yes.

17 Q. Do you understand what that's asking?

18 A. Yes.

19 Q. As a juror, if you find one thing that's
20 mitigation, you might look at it and say, "There is
21 mitigation," but that second step, "I don't think there is
22 anything -- it's not sufficient to warrant a life sentence
23 over a death sentence."

24 Or that juror next to you might find five
25 things that are mitigation, and they might think none of

1 those five things are sufficient, important enough, to
2 justify life over death. And someone next to you might say,
3 "Well, I found one, and I do think it's sufficient."

4 Do you see how that works?

5 A. Yes.

6 Q. The point is, you have to be able to look at that
7 question, look at all the evidence you've heard, and make
8 your own independent determination, first, whether there is
9 mitigation, and if there's mitigation, is it sufficient to
10 warrant life over death?

11 A. Yes.

12 Q. Could you look at that question on its own,
13 separate from those other two, the guilt or innocence of the
14 defendant and then finding a probability of future danger?

15 A. Yes.

16 Q. Could you look at it on its own?

17 A. Yes.

18 Q. And if you believed that there was some
19 mitigation, anything that was sufficient to warrant life
20 over death, would you answer that question yes?

21 A. Yes.

22 Q. If you looked at it and said there is not anything
23 sufficient to warrant life over death, would you answer it
24 no?

25 A. No. I would still answer yes.

1 Q. Oh, you would still answer yes. You would always
2 find something sufficiently mitigating to impose life over
3 death?

4 A. Sometimes, yes.

5 Q. Let me make sure we're on the same page.

6 A. Okay.

7 Q. Is what you're telling me, that after looking at
8 all the evidence on guilt or innocence, as well as
9 punishment, you would always find something that was
10 sufficient to warrant a life sentence, something
11 sufficiently mitigating to warrant a life sentence over a
12 death sentence?

13 A. No. Now I understand.

14 Q. Because I want to make sure -- because everything
15 we've talked about until now, you've said you believed that
16 the death penalty is appropriate in some cases.

17 A. Yes.

18 Q. And if you believed that it was warranted, you
19 would give it?

20 A. Yes.

21 Q. Let me make sure we're clear.

22 A. Okay.

23 Q. Special Issue Number 3, you would look to see if
24 there is mitigation?

25 A. Yes.

1 Q. You would keep an open mind to see if there is
2 mitigation?

3 A. Yes.

4 Q. And let's say you found it. In my hypothetical,
5 you found something that's mitigation. Your next job, as a
6 juror, is then to say, "There is mitigation. Now, do I
7 believe it's sufficient to warrant a life sentence over a
8 death sentence?"

9 You see where that goes?

10 A. Yes.

11 Q. Would you keep an open mind to that, or would you
12 always, if you found something --

13 A. An open mind.

14 Q. An open mind?

15 A. Yes, I would.

16 Q. So simply finding mitigation, you understand
17 that's not enough to answer that question yes?

18 A. Yes.

19 Q. To answer that question yes, you have to find,
20 first, mitigation and that it's sufficient to warrant life
21 over death.

22 A. Uh-huh.

23 Q. You understand that?

24 A. Yes.

25 Q. So you wouldn't always -- you're not saying that

1 you would, in every case, no matter the facts or the
2 evidence, always find mitigation?

3 A. Yes.

4 Q. You're not saying that you would do that?

5 A. No, not always.

6 Q. You might. You have an open mind as to whether it
7 existed?

8 A. I'll have an open mind, yes.

9 Q. If it existed, you would keep an open mind as to
10 whether it's sufficient enough to warrant life over death?

11 A. Yes.

12 Q. You're not saying it always would or it always
13 wouldn't; you'd have to determine that after you heard it?

14 A. Yes, I would determine it.

15 Q. So the answer to that third special issue would
16 not always be yes, and it would not always be no?

17 A. That's right.

18 Q. It would be whatever you believed it should be
19 based on what you've heard?

20 A. Yes.

21 Q. Because I'll tell you this: You know, it doesn't
22 take a rocket scientist to understand what's happening here.
23 If you find -- as a juror in a hypothetical case, if you
24 find someone guilty of capital murder and you answer that
25 first question, "Yes, I believe there is a probability he'll

1 be a future danger," and then you answer that second
2 question, "No, there is not sufficient mitigation to warrant
3 life over death," you know the death penalty is going to
4 happen.

5 A. Yes.

6 Q. It's going to be imposed.

7 A. Yes.

8 Q. And if you answer any other way, a life sentence
9 is going to be imposed. You're not saying that you would
10 manipulate your answers to ensure that a life sentence was
11 imposed?

12 A. No, I would not.

13 Q. And you're not saying that you would manipulate
14 your answers to ensure that a death sentence was imposed?

15 A. No, I would not.

16 Q. You would look at those questions, and you would
17 answer them the way they ought to be answered?

18 A. That's right.

19 Q. And you would follow the law on that?

20 A. Yes.

21 Q. And whatever the Judge instructs you is the law --
22 because I'll tell you, we can talk -- I could ask a hundred
23 million questions, and Mr. Perkins could ask a hundred
24 million and one questions, but we're not the judges of the
25 law. Judge Skeen is the judge of the law. He'll give you

1 the law.

2 So if we misrepresent something inadvertently
3 or if we say something that's not a hundred percent right,
4 he'll instruct you as to what the law is. And if he does,
5 can you follow the law?

6 A. Yes.

7 Q. Your feelings are that you're in favor of the
8 death penalty; you think it's a good idea; you think it's
9 fair; you think some people are deserving of the death
10 penalty, and some people are not?

11 A. True.

12 Q. You would be able to keep an open mind as to which
13 of those people are deserving of the death penalty?

14 A. Yes.

15 Q. You could hold us to our burden of proof?

16 A. Yes.

17 Q. You would not require the Defense to put on any
18 kind of case or present any evidence at all?

19 A. Yes.

20 Q. You wouldn't require the defendant ever to
21 testify?

22 A. No.

23 Q. And you wouldn't hold it against him if he chose
24 not -- a defendant chose not to for any purpose?

25 A. No, I would not.

1 Q. You could consider the existence of lesser
2 included offenses, even though he's been charged with -- a
3 defendant was charged with capital murder, and you could
4 consider all of the ranges of punishment as instructed by
5 the Court?

6 A. Yes, I could.

7 Q. Bottom-line question: Is there any reason you
8 think that you couldn't be fair to either the State or to
9 the Defense?

10 A. No reason.

11 Q. Do you think you could keep an open mind and wait
12 to hear all the evidence before you begin judging it?

13 A. Yes.

14 Q. And you think you could follow any instructions
15 that came from the Honorable Judge Skeen?

16 A. Yes.

17 Q. One other thing, you might hear victim-impact
18 testimony. It's testimony that comes from the relatives or
19 family of a deceased. It can be powerful testimony. It can
20 be very emotional.

21 The law says you can consider that if it
22 helps you in answering those special issues. You can
23 consider it if it helps. You can disregard it if it doesn't
24 help. You give it whatever weight you think it deserves.

25 The only thing you can't do is consider it to

1 the extent that you would exclude all the other evidence.
2 You can't be so impassioned that you would automatically
3 say, "That was so powerful, that was so emotional, I'm going
4 to automatically answer these questions in a way that a
5 death sentence is imposed." You just can't do that.

6 You can follow that instruction?

7 A. Yes.

8 Q. Ma'am, Ms. Nelson, thank you very much for your
9 patience. I really appreciate it. I think Mr. Perkins may
10 have just a couple questions for you.

11 MR. HARRISON: Pass the witness.

12 THE COURT: Mr. Perkins?

13 MR. PERKINS: Thank you, Judge.

14 VOIR DIRE EXAMINATION

15 BY MR. PERKINS:

16 Q. Afternoon, Ms. Nelson.

17 A. Afternoon.

18 Q. How are you?

19 A. Fine.

20 Q. I see on your questionnaire your name is Mae F.
21 Nelson. Your middle name wouldn't be Francis, would it?

22 A. Yes.

23 Q. Mae Francis Nelson?

24 A. Yes.

25 Q. And you live down in Troup; is that right?

1 A. Yes.

2 Q. Ms. Nelson, have you ever been on a jury before,
3 ever been called for jury duty before?

4 A. No. Been called for minor things, but never did
5 get to serve.

6 Q. Okay. So you would get called and sit through the
7 big panel, but never actually sat through a trial itself?

8 A. Uh-huh. That's right.

9 Q. Well, what I want to do is I want to go over with
10 you and talk to you about some of the same things that
11 Mr. Harrison visited with you about just to make sure in my
12 mind that I'm understanding what you're saying.

13 And I'm going to tell you, it is so
14 refreshing to come in here and have somebody say yes and no.
15 So many people come in here and they say, "Well, I'll try
16 to," or "I think I could" or "I hope I could," but it is so
17 nice to have somebody come in here and say, "Yes, I can; no,
18 I can't," that kind of thing, because it speeds up things so
19 much.

20 A. Okay.

21 Q. So while we're going through this, this is our
22 only chance. If you get picked to be a juror on this case,
23 the very first thing that's going to happen is Judge Skeen
24 is going to instruct you not to talk to us, except maybe
25 say -- I think the word is casual greetings. And we're not

1 supposed to talk to you and wouldn't get to talk to you
2 again until after the case was over.

3 So the reason it's so important is, is
4 because now is the only time we have an opportunity to visit
5 back and forth and find out how you feel about things and
6 whether or not you like this or would change this or believe
7 in that or don't believe in it.

8 And I will tell you, from my perspective when
9 I sit here and you go through the things with Mr. Harrison,
10 everything you said so far sounds like you're right along
11 with what the law would require of you.

12 A. Yes.

13 Q. One of the things that the law is going to require
14 of you right off the bat is to be patient. You're getting a
15 dose of that already by having to come sit down here last
16 Thursday and sit around forever and then come and sit around
17 out in the hall out here and now go through this.

18 What the law asks you to do is, is to be
19 patient and listen to everything before you start making any
20 kind of decisions.

21 A. True. Uh-huh.

22 Q. What's the biggest decision you ever felt like you
23 made in your life?

24 A. Buying my house.

25 Q. Buying a house.

1 A. Yes.

2 Q. Now, would you say that you would make a better
3 decision if you made that decision with your head or with
4 your heart?

5 A. With your head.

6 Q. Okay. I love my wife. I think she's fabulous,
7 and I married way above my station in life. If my wife has
8 one failing, it's that she makes impulsive decisions, which
9 I'm probably one of those, and I was a benefit of that. But
10 she makes impulsive decisions.

11 She'll be driving down the street, and she'll
12 see a car that she likes, and that's all I'll hear until she
13 buys that car. And then she'll buy that car, and it will
14 turn out to ride rough and get terrible gas mileage or
15 something.

16 And that's why in the time that she's had
17 five or six cars, I've had the same truck the whole time
18 until last week. In the last ten years, I've had one truck,
19 and she's had five or six cars because she makes impulsive
20 decisions with her heart instead of using her head,
21 sometimes, to reason out, do some research, and that kind of
22 stuff, okay?

23 A. Okay.

24 Q. There are people that make impulsive decisions.
25 Would you agree with me?

1 A. Yes. Uh-huh.

2 Q. There are people who make assumptions while they
3 try to make decisions, and those people, a lot of times, end
4 up regretting their decisions. Would you agree with that?

5 A. Yes. Uh-huh.

6 Q. What I want you to do when you're going through
7 here is, if you've got a conflict between your head and your
8 heart about any of this stuff that we're talking about, let
9 us know.

10 A. Okay.

11 Q. They deserve to know, and Mr. Beatty right here
12 deserves to know, okay?

13 A. Okay.

14 Q. Now, let me start at the very start. They, the
15 State of Texas, the Court, have said time and time again
16 this is a capital murder case. This is a case where the
17 State is seeking the death penalty, so on and so forth.

18 Because of the procedure and the rules we
19 have to follow, I can't interrupt them. Mr. Harrison is
20 right when he says my job is to sit here respectfully and
21 wait my turn.

22 But every time that they say this is a
23 capital murder case, I want to stand up and say, "No, it's
24 not." What it is, is they have alleged that he committed
25 the offense of capital murder. He is going to enter a plea

1 of not guilty, and that's why we're going to have a trial,
2 okay?

3 They say it's a capital murder case. They
4 say it's a death penalty case. I say it's not even a
5 capital murder case in the first place. And as Mr. Harrison
6 correctly stated to you, unless you're convicted of capital
7 murder, you can't possibly get the death penalty.

8 You understand all of that?

9 A. Yes, I do.

10 Q. So it's tough sometimes to sit over here and just
11 wait. You appreciate that we have to wait before we get to
12 talk to you.

13 A. Yes.

14 Q. What do you think about our legal system in
15 general? Do you think it's good; it's always fair; it's
16 fair most of the time; it's not fair most the time? How do
17 you feel about it?

18 A. Good.

19 Q. In fact, a lot of people, me included, would think
20 it's probably the best system that there is in the whole
21 world.

22 Is that system, in your mind, incapable of
23 making mistakes?

24 A. No, it's not incapable of making mistakes.

25 Mistakes are made every day in some kind of way.

1 Q. Right. In fact, you probably read about -- have
2 you ever read anything about people -- you know, that they
3 found out years later --

4 A. Yes.

5 Q. -- a mistake had been made in court?

6 A. Yes, you hear about that all the time.

7 Q. I noticed that in your questionnaire, you watch
8 some of the same things, some of the same programs, "48
9 Hours," "20/20," that kind of stuff. They have a lot of
10 cases about that very subject, don't they?

11 A. Sometimes.

12 Q. What do you think in your own mind is worse, to
13 convict somebody who should be found not guilty or to acquit
14 somebody who should be found guilty? Which one of those is
15 worse in your mind?

16 A. To convict somebody who is not guilty.

17 Q. You know, I don't know if there is a good answer
18 for that, but that's the way the system is set up.

19 As you sit here right now, do you have any
20 problem presuming that Tracy Beatty is not guilty?

21 A. No.

22 Q. Can you afford him, can you give him the
23 presumption of innocence?

24 A. Yes.

25 Q. Because a lot of people come in and they say,

1 "Hey, look, if he's charged with it, he's been indicted,
2 he's been arrested, he must have done something wrong or he
3 wouldn't be here," that kind of attitude.

4 A. Uh-huh.

5 Q. Do you feel like that at all?

6 A. No.

7 Q. Okay. You understand that the fact that somebody
8 has been arrested or charged with something, the fact that
9 they've been indicted, the Court's going to instruct you --
10 this isn't my rule -- the Court's going to instruct you that
11 you're not to consider that as any evidence of guilt at all.

12 Can you follow that instruction?

13 A. Yes.

14 Q. The -- the next thing I want to talk to you about
15 is something that Mr. Harrison touched on a little bit, and
16 I want to talk to you some more about it, and that's the
17 Fifth Amendment, the right to remain silent.

18 You understand that a constitutional right
19 doesn't mean much if you're going to penalize somebody for
20 using it?

21 A. Yes, I do understand.

22 Q. I mean, that theory, "You've got this right, but
23 if you use it, I'm going to hold it against you." That's
24 not exactly the way that works.

25 And one thing that you've said, when

1 Mr. Harrison asked you, can you think of a reason why
2 somebody wouldn't testify, my notes say that you said that
3 he might incriminate himself.

4 A. Yes.

5 Q. Do you think that everybody that invokes their
6 Fifth Amendment privilege is doing it to keep from giving
7 evidence against themselves?

8 A. No.

9 Q. Because that's the exact kind of thing that we're
10 trying to guard against.

11 A. Yes.

12 Q. You know, there may be a whole litany of reasons
13 why somebody has decided not to testify. That's a decision
14 that we don't have to make until the very end of the trial.

15 A person may say, as Mr. Harrison correctly
16 stated, the burden is on you. If I believed that you hadn't
17 proved it beyond a reasonable doubt, there is no reason to
18 testify.

19 Do you understand that?

20 A. Yes, I do.

21 Q. Okay. The Court would instruct you not to
22 consider it for any purpose at all, not to weigh it as a
23 factor against any defendant in a case.

24 Can you do that?

25 A. Yes.

1 Q. And just weigh the State's evidence for what it
2 is? Because if you take the State's evidence over here and
3 you say, "All right, well, they've proved this and that to
4 me, but I'm not convinced beyond a reasonable doubt, but
5 since the defendant didn't testify, I'm going to throw that
6 over on top of their pile; it's going to make their evidence
7 better; it's going to make their witnesses more believable,"
8 then you're actually penalizing somebody for exercising that
9 constitutional right.

10 Can you tell us, "Mr. Perkins, you don't have
11 to worry about that"?

12 A. Yes.

13 Q. All right. I don't know -- and I know it was your
14 son, right, that worked as a prison guard for a while before
15 he went out to Tyler Pipe?

16 A. Yes.

17 Q. I assume the reason he went to Tyler Pipe is more
18 money?

19 A. I guess.

20 Q. Tyler Pipe probably pays a whole lot better than
21 Bradshaw State Jail, I would assume.

22 A. Yes.

23 Q. Is there anything at all about your having an
24 ex-prison guard -- I don't even know if he was a prison
25 guard or if he worked out there doing something different,

1 but is there anything about that that makes you believe that
2 police officers are more credible than ordinary citizens?

3 A. No.

4 Q. I'll tell you, the way I've always looked at it,
5 and I used to work in the DA's office, in fact, in this one,
6 and before that, Lubbock. And Ken Hawk over here, too. We
7 both worked for Mr. Skeen when he was the DA.

8 What I've always said to people is, there are
9 good and bad everything.

10 A. True.

11 Q. I don't care if we're talking about plumbers,
12 painters, lawyers, cops, whatever. There are some that you
13 should absolutely trust with your life savings, and there
14 are others that you should not trust with a plug nickel.

15 A. That's true.

16 Q. What you have to be able to do is to say, "Look, I
17 will wait and listen to what they say, along with everybody
18 else, and then I'll decide whether to believe some of it,
19 all of it, part of it, none of it, whatever the situation
20 calls for."

21 Do you have any problem doing that at all?

22 A. No.

23 Q. So if a policeman came in and said "X" and another
24 witness came in and said "Y," you're not going to lean over
25 and say, "Well, the policeman said it, and he's a policeman,

1 so I'm going to believe him over this other one just because
2 he's a policeman"?

3 A. No, I'm not.

4 Q. Another thing that goes along with that, if a
5 defendant in a trial testifies, can you judge his
6 credibility just like you would anybody else's?

7 A. Yes.

8 Q. Okay. All right. Do you have any questions at
9 all about any of that?

10 A. No. Huh-uh.

11 Q. Let me talk to you a second about reasonable doubt
12 and the burden of proof. Mr. Harrison correctly stated that
13 the burden of proof is on the State of Texas, that they have
14 to prove each and every element of the offense charged
15 beyond a reasonable doubt.

16 A reasonable doubt is whatever you think it
17 is, and he went through, I think, a number of different
18 scenarios, one of them talking about somebody throwing water
19 off the top of the courthouse or something.

20 But what it really means, when it comes down
21 to it at the end of this is, if you've got a reasonable
22 doubt, if they have not extinguished all reasonable doubt
23 from your mind, what are you supposed to do?

24 A. Weigh it out and determine whether it's right or
25 it's wrong and determine whether he's guilty or not guilty.

1 Q. Okay. Now, stick with me through this
2 hypothetical. You're on the jury, and Ken Hawk is charged
3 with stealing this bottle of water, and I bet his
4 fingerprints are on here right now, and now mine are, too.
5 But let's say Ken Hawk is on trial for stealing a bottle of
6 water.

7 And you understand that they have to prove
8 each and every element of that to you beyond a reasonable
9 doubt?

10 A. Yes, I do understand.

11 Q. They come close. You think, "Yeah, he probably
12 did it. I think it's more likely than not that he did it,
13 but I am not convinced beyond a reasonable doubt. I've got
14 some reason to doubt it, or I have a reasonable doubt in my
15 mind." What do you with Ken Hawk?

16 A. Wait to see if he's guilty beyond a reasonable
17 doubt. If he is, then he is. If he's not, he's not guilty.

18 Q. And that's what I'm telling you. The trial is
19 over, and you're back there, and you go through it with
20 everybody else, and you say, "Well, you know, it's more
21 likely than not that he did it, he probably did it, but I am
22 not convinced beyond a reasonable doubt that he did it."

23 In that circumstance, what do you do? If
24 you're not convinced beyond a reasonable doubt of each and
25 every element, what do you do?

1 A. I would say he's not guilty.

2 Q. That's what the Court would instruct you to do.

3 A. Uh-huh.

4 Q. Now, if you make a mistake and the State just
5 failed to prove it, but in reality, he did it --

6 A. Yes.

7 Q. -- you wouldn't much worry about finding him not
8 guilty, would you? Because so what? He stole a bottle of
9 water. I'm not really worried if he goes out and steals
10 another one, right?

11 A. Right.

12 Q. What I have to guard against and what we are
13 entitled to know here, the State and the Defense both is,
14 some people say, because of the allegation, it's going to be
15 either easier to prove or harder to prove.

16 Let's say now that Ken Hawk is on trial for
17 capital murder, and you hear bad stuff, I mean, bad stuff,
18 and you think to yourself, "It's more likely than not that
19 he did it, I think he probably did it, but I've got a
20 reasonable doubt. I do not believe that the State has
21 proven each and every element of the offense charged beyond
22 a reasonable doubt."

23 What are you supposed to do then?

24 A. Like I said, weigh it out and see which is which.
25 And if he's not guilty and has not been proven that he's not

1 guilty, then he's not. But if he is, he is guilty. Have an
2 open mind there.

3 Q. Okay. Let me kind of talk to you -- and I do see
4 and appreciate that you say you have an open mind and are
5 not easily persuaded. Two things I want to talk to you
6 about. Number one, nobody is trying to persuade you or
7 trick you.

8 A. Yes, sir.

9 Q. But one thing that causes me concern, if it's been
10 proven that he's not guilty --

11 A. Uh-huh.

12 Q. -- Mr. Hawk doesn't have any burden of proving
13 anything to you. It's the State that must prove him guilty
14 beyond a reasonable doubt.

15 And if you get back there in the jury room,
16 and you sit there and you say, "It's more likely than not
17 that he did it; he probably did it; I might even be
18 convinced by clear and convincing evidence that he did it;
19 but the State has to prove beyond a reasonable doubt that he
20 did it, and they did not do it; I've got a reasonable doubt
21 about this or that; I've got a reasonable doubt about
22 something that they have to prove," and Ken Hawk is on trial
23 for capital murder, if you get back there and you have a
24 reasonable doubt about whether or not he's guilty, what are
25 you supposed to do?

1 A. Find him not guilty, if I've got a reasonable
2 doubt.

3 Q. Now, see, that situation for a lot of people is
4 harder to do, because if a mistake is made and Ken Hawk
5 actually did do it, and they didn't prove it, I always worry
6 about the jurors saying, "Well, I'm not going to take a
7 chance. I'd rather err on the side of safety. Even if I'm
8 wrong, I would rather find him guilty than take a chance of
9 being wrong, even if they didn't prove it beyond a
10 reasonable doubt."

11 Do I have to worry about that with you?

12 A. No. Huh-uh.

13 Q. Because like you said before, it's worse to
14 convict somebody of something that they didn't do than the
15 other way around.

16 A. Uh-huh.

17 Q. Now, let me tell you what the law says, is, if you
18 could just picture -- like if I had a ladder and I leaned it
19 up against that wall, the top rung on the ladder is capital
20 murder. What the law would tell you is, here's the top rung
21 up here.

22 If you believe beyond any reasonable doubt
23 that the State has proven capital murder, they've proven
24 each and every element of that offense beyond a reasonable
25 doubt, then you're supposed to convict that person.

1 A. That's true.

2 Q. If they don't, then you go down to the next rung
3 on the ladder and see, did the State prove each and every
4 element of that offense beyond a reasonable doubt?

5 A. Uh-huh.

6 Q. So it may be a situation where the top rung is
7 capital murder; the next rung is murder; the next rung is
8 manslaughter; the next rung is criminal negligent homicide;
9 and if they didn't prove anything, then down at the bottom
10 of the ladder is not guilty.

11 So what you do is, you start at the top. Do
12 I have a reasonable doubt about this? If the answer is yes,
13 then you move down to the next rung. Do I have any
14 reasonable doubt about this?

15 Do you understand how it works?

16 A. Yes.

17 Q. And if they failed to prove that the defendant
18 committed any crime then?

19 A. I would have to find him not guilty.

20 Q. That's right. So you actually have to go kind of
21 through a filter. You have to go down that ladder before
22 you get to not guilty.

23 Do you understand where I'm at on that?

24 A. Yes.

25 Q. The other thing I want to talk to you about is, is

1 that the Court would give you an instruction, and the way I
2 like to look at these instructions is like this: I told a
3 juror yesterday that I'm on a diet, and the doctor told me,
4 you know, "This is what you need to do, and this is what you
5 don't need to do; this is what you don't need to eat; this
6 is what you don't need to eat." That's his instructions to
7 me.

8 I should follow those instructions, right?

9 A. Right.

10 Q. If I want to do what's right, I should follow
11 those instructions?

12 A. Right.

13 Q. But that doctor is not following me around.

14 A. True.

15 Q. He's not following me into El Charro's to see if
16 I'm eating a chicken fried steak, like I'm not supposed to
17 be, is he?

18 A. That's right; he's not.

19 Q. He tells me, "You ought to do this; this is what
20 you ought to do," but it's left up to me.

21 A. That's true.

22 Q. I'm going to tell you, quite candidly, that the
23 Judge's instructions to the jury are much the same as
24 doctor's instructions to patients. The Court's not going to
25 go back to in there with you in the jury deliberation room

1 to make sure that you're following them. It's left up to
2 the jurors to honestly say, "I took an oath to do what
3 you're going to tell me to do."

4 A. That's true.

5 Q. Okay. And I'm sure, from looking at your
6 questionnaire, that you would take an oath seriously?

7 A. Yes, I would.

8 Q. You wouldn't say, "I'll take an oath to do this"
9 and then go back there and just disregard it, would you?

10 A. No, I wouldn't.

11 Q. Okay. Well, that's good.

12 What the Court would instruct you to do --
13 let's say you're on a case. Ken Hawk is charged with
14 burglary. We'll make him a burglar now. Ken Hawk is
15 charged with burglary.

16 You get back there, and you say, "Well, I
17 know that he's guilty of something, but I can't tell if he's
18 guilty of burglary or if he's just guilty of theft. I've
19 got a reasonable doubt. I know that he's guilty of one or
20 the other, but I'm not sure which one it is."

21 I know you don't know what the law is on
22 this, but what do you think that the law would be on this?
23 What do you think that -- how should you resolve that? And
24 then I'll tell you whether or not you're right about that.
25 How do you think that the law would have you resolve that

1 difficulty?

2 A. It would be either or it could be either one. But
3 the way I would resolve it would say that he's not guilty.
4 Without beyond a reasonable doubt, he would be.

5 Q. Okay. The law says that if you -- if somebody is
6 proven to be guilty of a greater crime, burglary, or a
7 lesser crime, theft --

8 A. Theft.

9 Q. -- that you should resolve that in favor of the
10 defendant and find him guilty of only the lesser offense.

11 A. Oh, really?

12 Q. Okay. Do you have any problem following that
13 instruction?

14 A. No.

15 Q. And let me try to use an example. Let's say Ken
16 lives across the street from me, and one night when I'm at a
17 church social, he climbs in the window and steals my DVD,
18 okay?

19 He is guilty of entering a habitation and
20 taking property that did not belong to him with the intent
21 of depriving the owner, that's me, of the property. That's
22 kind of a classic example of burglary.

23 A. Okay.

24 Q. Now, let's change a little bit. Let's say that me
25 and Ken Hawk live in the same house together.

1 A. Okay.

2 Q. He's my roommate, and I'm gone to play bingo or
3 gone to the gambling boat or wherever I might be going this
4 time, and Ken Hawk slips in my room and steals my DVD.

5 If a juror was convinced beyond a reasonable
6 doubt that he had committed a crime, but a juror had a
7 reasonable doubt as to whether or not it was burglary or
8 theft, they should resolve that, according to the Court's
9 instructions, in his favor and convict him only of the
10 lesser offense.

11 Do you understand how that works?

12 A. Yes.

13 Q. Do you have any problems following that
14 instruction?

15 A. No.

16 Q. Do you have any questions about that?

17 A. No.

18 Q. Did you know that you were going to go to law
19 school here in two hours?

20 A. No, I did not.

21 Q. I will tell you, and I say this with all
22 sincerity. Anybody who sits through this knows more about
23 the capital murder procedure than any of us sitting at this
24 table did when we got out of law school. I guarantee you
25 that that's the case.

1 And we expect a lot out of jurors. We expect
2 them to pick up on this stuff and learn a lot in a short
3 period of time. So there is nothing wrong with you saying,
4 "I'm lost."

5 A. Okay.

6 Q. Thank you.

7 The next thing I want to talk to you about
8 are the special issues. They are right there in front of
9 you.

10 Were you fixing to ask me something?

11 THE COURT REPORTER: She thought you were
12 through. She was getting ready to leave.

13 Q. (By Mr. Hawk) Don't get your hopes up. I'm
14 getting my second wind. Sorry about that. I'll give you a
15 warning when I'm nearly finished, okay?

16 A. Okay.

17 Q. I'm sorry to be the bearer of bad news. I'm
18 getting close to finish, though.

19 A. Okay.

20 Q. The special issues are right there in front of
21 you. What I would like to do is back up a step and touch on
22 some of the stuff Mr. Harrison talked about.

23 Everybody who is charged with capital murder
24 doesn't get the death penalty.

25 A. That's true.

1 Q. First of all, there's going to be people charged
2 with capital murder that aren't convicted of capital murder.

3 A. Okay.

4 Q. If they get convicted of anything other than
5 capital murder, they can't get the death penalty. And he
6 used an example. I think in his example he shot and killed
7 or stabbed April Sikes, as bad a murder as you could ever
8 think of. If you looked up Brett Harrison in the dictionary
9 and it had a definition, Brett Harrison had his picture,
10 scumbag, worthless human being, I mean, all these terrible
11 things about him.

12 Even if he was the worst person in the
13 world -- and he's not even, but even if he was the worst
14 person in the world and he committed the worst murder that
15 you could ever dream of, if it's murder, he cannot get the
16 death penalty. He can't do it. I don't care how bad he is.
17 I don't care how bad the facts and circumstances of the
18 murder are.

19 How do you feel about that?

20 A. That's true. I'll go along with that, you know.

21 Q. It's true, but let me tell you how I feel about
22 it. I think that that is the goofiest thing I have heard in
23 the law.

24 A. Oh, really?

25 Q. Yeah. I mean, why wouldn't he be eligible, is

1 what I would want to say.

2 A. Uh-huh.

3 Q. But the law says not eligible.

4 The only time that that comes into worrying
5 anybody is, is if a juror would be tempted to find somebody
6 guilty of something greater than what was proven just to
7 keep them eligible for the death penalty.

8 Would you do anything like that?

9 A. No.

10 Q. Good, because you wouldn't be following your oath
11 to render a true verdict if you were to do something like
12 that. Do you understand that?

13 A. Yes.

14 Q. Okay. Back to my example.

15 Everybody that's ever been charged with
16 capital murder is in this great big circle, okay? I'm going
17 to narrow down the circle to just people who are convicted
18 of capital murder. Those people are still in the running
19 for the death penalty, okay?

20 A. Okay.

21 Q. What those special issues do is they make the
22 circle smaller and smaller, okay?

23 A. Okay.

24 Q. The only way in Texas that anybody can get the
25 death penalty is, all 12 jurors agree beyond a reasonable

1 doubt that the State has proven every element of capital
2 murder. That's the only way. That's Step Number 1.

3 Step Number 2 is, that the State, again, has
4 the burden of proving, again, beyond a reasonable doubt that
5 the person on trial would constitute what we paraphrase as a
6 future danger to society, okay?

7 A. Okay.

8 Q. As Mr. Harrison told you, society means whatever
9 you think it means, okay?

10 A. Yes.

11 Q. They have to prove to you that there is a
12 probability that the person on trial would commit -- not
13 could commit, but would commit future acts of criminal
14 violence -- not acts of violence, you know, criminal acts of
15 violence that would constitute a continuing threat to
16 whatever you believe society was, okay?

17 A. Yes.

18 Q. Now, the only way to get closer to the death
19 penalty is that all 12 jurors agree that the answer to
20 Special Issue Number 1 is yes.

21 A. That's true. Yes.

22 Q. If you believe that the answer to that is yes,
23 then you move to the last special issue. That special issue
24 asks you to look at all the facts and circumstances in the
25 case, and if you find that there is a sufficient mitigating

1 circumstance, singular -- it can be just one thing -- or
2 circumstances, plural, to warrant that a life sentence
3 rather than a death penalty be imposed. It's just a yes or
4 no answer.

5 A. Yes.

6 Q. Okay. If you find that there is sufficient
7 mitigating circumstance or circumstances, you answer it yes.

8 A. Yes.

9 Q. If you don't, you answer it no. There is no
10 burden on the Defense to show you what the answer should be;
11 there is no burden on the State to show you what the answer
12 should be because you consider all of the evidence that
13 you've heard in both stages of the case and then decide, is
14 there a sufficient mitigating circumstance, yes or no.

15 A. Yes.

16 Q. The only way that a person gets the death penalty
17 in Texas is all 12 guilty beyond a reasonable doubt, all 12
18 proven beyond a reasonable doubt future danger, and all 12
19 agree there is no mitigating fact or circumstance that
20 warrants a life sentence rather than the death penalty be
21 imposed.

22 A. Uh-huh.

23 Q. Any other combination, no death penalty. Do you
24 understand that?

25 A. Yes.

1 Q. Now, let me talk to you just for a minute -- and
2 I'm nearly finished -- about the difference in murder and
3 capital murder. Capital murder -- and there should be a
4 sheet in front of you that says at the top "capital murder."

5 You see it up there?

6 A. Yes.

7 Q. It kind of looks like that. There you go.

8 That is a page out of, basically, the Penal
9 Code that says every possible way to commit capital murder.
10 That's all of them, okay?

11 In this particular case, the State has
12 alleged that Mr. Beatty caused an intentional murder during
13 the course of burglary and robbery. Let me talk to you
14 about that for a second.

15 If you look down there on -- in 19.03, I
16 think it's the one with the Number 3 in the paragraph -- no,
17 Number 2 in the paragraph out beside it. The person
18 intentionally commits the murder in the course of committing
19 or attempting to commit, and it has all those different
20 felonies listed.

21 A. Yes, sir.

22 Q. Okay. You see where I'm talking about?

23 A. You said which one was that?

24 Q. Sometimes you have to flip it over so I can see
25 it.

1 19.03, and it has a little Number 2 out
2 beside it. It's right here on the page, if you can see
3 where my thumb is pointing, way up high at the top up here
4 (indicating).

5 A. Yeah, the very first line.

6 Q. That tells you all the different felonies that
7 will support a capital murder conviction, okay? You see
8 them all listed there?

9 A. Yes.

10 Q. What would be incumbent upon the State in this
11 case is to prove, number one, an intentional murder, okay?

12 A. Okay.

13 Q. It is not good enough for them to prove a murder,
14 which is not an intentional murder. And let me explain
15 that.

16 Let's say that I am trying to get Ken Hawk's
17 watch off of him. I want his watch. It's a whole lot nicer
18 than mine, and I am in the course of committing a robbery.
19 I pull out a gun, and I'm trying to take property from him
20 by force, okay?

21 A. All right.

22 Q. Let's say that I'm trying to get his watch, and I
23 can't get it off because his hands are too big. And so I
24 decide I'm going to shoot him in the back of his hand, and I
25 shoot him in the back of his hand, and that makes it a lot

1 easier to slip his watch off, okay?

2 A. Okay.

3 Q. If I commit a murder, a jury has to find beyond a
4 reasonable doubt that I had formulated the specific intent
5 to murder him. If you believe that I had this specific
6 intent to cause serious bodily injury and I did an act
7 clearly dangerous to human life that resulted in his death,
8 that will not support a capital murder, okay?

9 It has to be that I had formulated the
10 specific intent to cause his death and that I had committed
11 or attempted to commit another felony and that those things
12 happened in the course of one another.

13 You understand those three things?

14 A. Yes.

15 Q. So you can see that there's a lot of difference in
16 proving beyond a reasonable doubt murder and proving beyond
17 a reasonable doubt capital murder.

18 A. Okay.

19 Q. Because not only did they have to prove an
20 intentional murder, okay, they also have to prove a second
21 felony, and it has to be one of these felonies that's listed
22 on here.

23 A. Uh-huh.

24 Q. So you can't have capital murder during the course
25 of credit card abuse. You can't have a capital murder

1 during unauthorized use of a motor vehicle. It has to be
2 one of those that's in there.

3 Do you have any problems following that
4 instruction?

5 A. No.

6 Q. Now, the last thing I want to talk to you about is
7 this: It's called "in the course of commission," okay? "In
8 the course of commission" is defined as conduct occurring in
9 an attempt to commit, during the commission, or in the
10 immediate flight after the attempt or the commission of the
11 offense, okay?

12 For a case to qualify as a capital murder
13 case, the intent to commit the underlying offense has to be
14 formed concurrently with, which means at the same time as,
15 or prior to the intent to commit the murder, okay?

16 A. Okay.

17 Q. Let me give you a different example and see if I
18 can make it much more clearer to you, because that's a bunch
19 of fancy lawyer words.

20 Let's say that I'm working in a convenience
21 store, and me and Ken Hawk have never gotten along at all.
22 And Ken comes in there, and he says, "Go get me a burrito,"
23 and so I get him a burrito from the convenience store, and I
24 get him the smallest one. It's all torn up. It's been
25 there for about three or four days, and I say, "Here's you a

1 burrito right here."

2 And he gets all mad about that, and we start
3 hawing back and forth at each other. He gets mad, goes out
4 to his car, and bites into that burrito, and it's cold and
5 stale, and he's just as mad as he can be at me. I didn't
6 give him any hot sauce or any napkins or nothing.

7 He comes back in there and decides that he
8 has had enough. He pulls out a gun and shoots me 275 times,
9 okay, and then he leaves. As he's leaving, he thinks, "You
10 know what? I think I'll go back in there and get all of
11 burritos and all the money out of the cash register and
12 Robert Perkins's wallet off of him. I'm going to get all of
13 that."

14 Well, now you're on his trial, you're on his
15 jury, and you believe beyond a reasonable doubt that he
16 committed an intentional murder. That's been proven to you
17 beyond a reasonable doubt.

18 A. Yes.

19 Q. And you believe that he came back in and
20 burglarized the store, but you've got a reasonable doubt
21 about whether the intent to commit the burglary was formed
22 at the same time or that it was in the course of committing
23 the murder.

24 A. Uh-huh.

25 Q. The law says that if you've got a reasonable doubt

1 about the element of "in the course of committing," you're
2 supposed to acquit him of capital murder.

3 Does that make any sense to you?

4 A. Yes. Uh-huh.

5 Q. Okay. Because that's a different scenario than
6 where he came in there with the specific intent to rob me,
7 and in the course of robbing me, killed me to keep from
8 having a witness or whatever. Now, he's guilty of murder,
9 and he may be guilty of burglary, too, but that's down the
10 ladder.

11 Do you understand where that's coming from?

12 A. Yes.

13 Q. And that's the way the law looks at it. I'm not
14 saying that's a good idea or a bad idea. What I'm telling
15 you is that's what the law says that you would have to be
16 able to do.

17 Do you have any problem with that law?

18 A. No.

19 Q. Do you have any problem following that law?

20 A. No.

21 Q. Now, always watch out for when a lawyer says this,
22 but I've got one more question for you, and I always put an
23 asterisk by it.

24 Do you want to be on the jury?

25 A. No.

1 Q. Because if you did want to be on the jury, we
2 would rush out and get you a CAT scan and make sure you were
3 all right. I don't think anybody wants to be on the jury.
4 But you understand -- and I certainly appreciate your honest
5 and direct answers today.

6 A. Uh-huh.

7 Q. Somebody's got to do it, and it's a big
8 responsibility.

9 A. Yes.

10 Q. But somebody has to do it, and they have to take
11 it seriously. Could you do that?

12 A. Yes. Uh-huh.

13 Q. Okay. Thank you, Ms. Mae Francis.

14 A. Please don't call me that.

15 Q. I appreciate it.

16 MR. PERKINS: That's all we have, Your Honor.

17 THE COURT: Ms. Nelson?

18 VENIREPERSON NELSON: Uh-huh.

19 THE COURT: What we're going to be able to do
20 now is you're going to be able to go on back home or
21 wherever you need to go. And then what we're going to do is
22 tomorrow afternoon -- it may be up near this time or a
23 little bit before this time tomorrow afternoon -- we're
24 going to call you.

25 And when I say "we're," either probably my

1 court coordinator, whose name is Kristen Davis, she is going
2 to call you and be able to tell you tomorrow afternoon,
3 later on tomorrow afternoon, whether or not you have been
4 selected to serve on this jury.

5 VENIREPERSON NELSON: Okay.

6 THE COURT: In between now and then, be real
7 careful not to talk to this case about -- I'm sorry -- not
8 to talk to anyone about this case. You know what I was
9 trying to say.

10 VENIREPERSON NELSON: Okay.

11 THE COURT: Not to talk to anyone about this
12 case, not to read anything about it in the paper, or watch
13 anything about it on TV.

14 And your home number is on your
15 questionnaire?

16 VENIREPERSON NELSON: Yes.

17 THE COURT: And that's the best place for us
18 to get in touch with you?

19 VENIREPERSON NELSON: Yes, sir.

20 THE COURT: Then we'll call you -- my court
21 coordinator, Kristen Davis, will call you tomorrow
22 afternoon. I don't know the exact time. It will probably
23 be sometime after the middle of the afternoon tomorrow. And
24 she will let you know whether or not you have been selected
25 for the jury.

1 If you have been selected for the jury,
2 she'll be able to tell you what you need to do next. If you
3 have not been selected, she'll be able to tell you what the
4 situation is at that point. But we will let you know late
5 tomorrow afternoon.

6 Very much appreciate, again, you coming in
7 early, which really helped us fill in a gap in our schedule,
8 and all of the time that you spent down here answering
9 questions this afternoon.

10 So you may be able to -- you can go ahead --
11 now you can really step down. Watch your step as you go
12 down over there, and you can go on back home or wherever you
13 need to go, and we'll be in touch with you tomorrow
14 afternoon.

15 Thank you, ma'am.

16 (Venireperson Nelson leaves the courtroom.)

17 THE COURT: Are y'all ready for Joshua
18 Bennett? You need a five-minute recess?

19 MS. SIKES: Please, Judge.

20 THE COURT: Okay. We'll take a five-minute
21 recess. Then we'll start with Mr. Bennett.

22 (Recess.)

23 (Venireperson Bennett enters the courtroom.)

24 THE COURT: Mr. Bennett, come on up and have
25 a seat right here up in the witness stand.

1 Back on the record in this cause number. The
2 defense counsel is present; State's counsel, the chief
3 felony prosecutor, April Sikes, is present.

4 How are you this afternoon, Mr. Bennett?

5 VENIREPERSON BENNETT: Doing fine, sir.

6 Yourself?

7 THE COURT: I'm doing fine. Thank you.

8 I apologize to you for the fact that we're
9 about 45 minutes late. You may not believe this, but we
10 don't always run right on time.

11 VENIREPERSON BENNETT: It's better than work.

12 THE COURT: That's no big surprise to you, is
13 it? But I apologize to you. You know, I know you've got
14 better things to do than sit on that hard bench out there.
15 It's just difficult to tell how the schedule will run along.
16 But I appreciate you being down here this afternoon and
17 waiting on us.

18 In this process we're going to go through now
19 is going to involve Ms. Sikes, who is an assistant criminal
20 district attorney, the chief felony prosecutor in the
21 District Attorney's Office. She's going to go through some
22 questions with you.

23 When she finishes, Mr. Hawk is going to go
24 through some questions with you. He represents the
25 defendant in the case, along with Mr. Perkins sitting right

1 there beside him.

2 So there are no right or wrong answers to the
3 questions that they are going to ask. The oath that I gave
4 all the jurors a week ago Thursday still applies, so your
5 answers are under oath.

6 There are no right or wrong answers to what
7 they're asking. They are mainly going to be asking your
8 opinions and views on certain type issues that are involved
9 in the trial of this type case.

10 They are going to be explaining procedures
11 and laws that apply to the trial of this type case, and they
12 are going to ask you questions like, can you follow the law?
13 Can you follow the procedures? They're going to explain
14 them to you.

15 If they ask you a question and you don't
16 understand it, don't hesitate to just tell them, "I don't
17 really understand what you're asking me," and they'll be
18 glad to restate it or rephrase it where you'll be able to
19 understand it.

20 Be sure and answer out. Like if they ask you
21 a question and it calls for a yes answer, answer out yes
22 rather than, like, shaking your head yes at them, or if it
23 calls for a no answer, rather than shaking your head no,
24 answer out no.

25 Answer out whatever the answer is because my

KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 court reporter has to be able to get down your answers. And
2 if you shake your head, she has no answer. So she needs you
3 to answer out, and then I don't think it will be any
4 problem.

5 The air conditioner is off right now. Just
6 be sure and keep your voice up loud enough where everybody
7 in the room is able to hear you.

8 The questionnaire you filled out when you
9 were hear before, do you have anything you need to add to
10 that?

11 VENIREPERSON BENNETT: I don't believe so.

12 THE COURT: All right, sir. Let me go --
13 recognizing you've been sitting outside a while, let me just
14 get this turned over to Ms. Sikes, and she'll go ahead and
15 start.

16 MS. SIKES: Thank you, Judge.

17 JOSHUA LEE BENNETT,
18 having been duly sworn as a member of the special venire,
19 was examined as follows:

20 VOIR DIRE EXAMINATION

21 BY MS. SIKES:

22 Q. Well, it is afternoon. I can almost say good
23 evening. How are you, Mr. Bennett?

24 A. I'm fine.

25 Q. I'm fine. Thank you for asking, although I am

1 kind of tired. We've been at this process a long time
2 today.

3 A. I can imagine.

4 Q. The Judge is exactly right. I may ask you a
5 question that not only may not make any sense to you, it may
6 not make any sense to me either. If you will just stop me,
7 slow me down, ask me to repeat it, I'm going to do my best
8 to try to make sense of where I'm trying to go with it,
9 okay?

10 A. Yes, ma'am.

11 Q. First of all, let me ask you about your shirt. I
12 notice it says "security" on it.

13 A. Just a shirt. I work for Cox Communications,
14 doing internet technical support.

15 Q. I saw that in your questionnaire, but I thought
16 maybe perhaps you'd changed professions since the last time
17 we were here. It seems like it's been rather a long time, a
18 little more than a week.

19 A. Seems like that, yes, ma'am.

20 Q. The other couple of things I want to tell you,
21 first of all, is we all have different roles here. You
22 understand that?

23 A. Uh-huh.

24 Q. The Judge told you that I'm the chief felony
25 prosecutor for Smith County.

1 A. Right.

2 Q. What that means, as one of the lawyers for the
3 State of Texas, I'm charged with the duty of trying
4 Mr. Beatty based on an indictment that's been returned by a
5 grand jury.

6 A. Okay.

7 Q. And we're going to talk a little bit about that
8 process this afternoon.

9 A. All right.

10 Q. There will be another lawyer, I suspect, who will
11 come in in just a minute. His name is Brett Harrison. He's
12 another State's attorney.

13 A. All right.

14 Q. So together, we represent the State of Texas.

15 A. Okay.

16 Q. The defendant -- and you don't know Mr. Beatty?

17 A. No, ma'am.

18 Q. He's seated what would be to my right around this
19 table.

20 A. Right.

21 Q. And he's with his defense team that have already
22 been introduced to you, Mr. Perkins sitting beside
23 Mr. Beatty and then Mr. Hawk facing me.

24 A. Yes, ma'am.

25 Q. And they're his defense team, and, obviously,

1 their responsibility is to represent their client to the
2 very best of their ability. And they're great lawyers, and
3 they're going to do that.

4 A. Right .

5 Q. Now, as a juror, your responsibility is a little
6 different than either one of the ones we've talked about.

7 Have you ever sat on a jury before?

8 A. No, ma'am.

9 Q. Basically, a jury's job is to decide questions of
10 fact; that is, what happened. You know, obviously, there
11 are two sides to every story or we wouldn't be here.

12 A. Right.

13 Q. Makes sense, right?

14 A. Yes, ma'am.

15 Q. You don't know any evidence about the case; is
16 that right?

17 A. Correct.

18 Q. And you won't hear any today either, because this
19 part of the process is really to find 12 fair and impartial
20 jurors, which we're going to talk a little bit more about
21 what that means, but 12 people who can sit in that jury box
22 and make a decision, who haven't heard any of the evidence,
23 who can follow the law that the Court gives them, and who
24 keeps an open mind, listens to all the evidence, and then
25 bases their verdict on that evidence, in other words, hadn't

1 made up their mind already one way or another.

2 A. Right. Yes, ma'am.

3 Q. Do those things make sense?

4 A. They do.

5 Q. So as a venireperson, which is what you are right
6 now, a potential juror --

7 A. Uh-huh.

8 Q. -- what that means is, you're not going to have
9 any evidence about the case today. We're just going to ask
10 you general questions, hypotheticals, talk a little bit
11 about the law.

12 And you tell me at any time if there is one
13 of those things that are compromised in any way, if you
14 can't follow the evidence, if you have made your mind up,
15 any of the things that we've talked about. If you'll stop
16 me and tell me, then we'll explore that a little bit more.

17 A. Okay.

18 Q. Now, if you are on the jury, like I told you, your
19 job would be, then, to get there on the first day and say,
20 "Okay. The trial starts now."

21 A. Okay.

22 Q. Listen to the evidence as it comes to you from the
23 witness stand as exhibits or evidence that are introduced or
24 not in the courtroom.

25 And is it a relief to you that you don't have

1 to know now?

2 A. Yes, ma'am.

3 Q. And you don't have to know when you are on the
4 jury. You don't have to know the law that governs this
5 case, all the law that is the law on capital murder
6 indictments.

7 Is that a relief to you?

8 A. Absolutely.

9 Q. I tell everybody it's relief to me, too. I've
10 been a lawyer 15 years, and the law is going to come to you,
11 not from me or from the defense team or any of the lawyers;
12 it's going to come to you from the Court, which is Judge
13 Skeen.

14 A. Okay.

15 Q. At the end of the case, you're going to get a
16 charge, which is a pretty thick book, but kind of like the
17 one you filled out.

18 A. Right.

19 Q. A thick amount of information that's going to say
20 this is the law, this is your guiding -- your direction for
21 the case. In other words, you listen to all the evidence
22 you get, and you plug that evidence into the law given to
23 you, and you decide how it fits together. That's your job
24 as a juror.

25 A. I see.

1 Q. And would you be able, at this point, to do that?

2 A. I believe so, yes, ma'am.

3 Q. We're going to talk about -- a little bit about
4 your feelings on the death penalty. Obviously, you know
5 that the grand jury has returned an indictment of capital
6 murder.

7 A. Right.

8 Q. You also know that the State has filed a notice to
9 seek the death penalty.

10 A. Yes, ma'am.

11 Q. Obviously, then, that's why you've been asked some
12 of the questions in your questionnaire.

13 A. Uh-huh.

14 Q. This is our only time to actually talk to you
15 about your feelings with regard to the death penalty. And
16 I'll tell you this: There is no right or wrong answer, just
17 like Judge Skeen told you. People feel differently for
18 different reasons. They base their beliefs on different
19 reasons. It's just our opportunity for me to talk to you,
20 and you talk back to me.

21 A. Uh-huh.

22 Q. Same as well as with the Defense, and kind of
23 explore that a little bit.

24 A. Yes, ma'am.

25 Q. So that's what I want to do now.

1 A. Okay.

2 Q. You know, everybody at this table, whether that's
3 the State or the Defense, has one common goal, which is to
4 find those 12 people, fair and impartial jurors.

5 A. Right.

6 Q. Would you agree with me that it wouldn't be fair
7 to a defendant in a capital murder case if the State had 12
8 people who gave the death penalty in a capital murder case
9 every single time, regardless of the evidence?

10 A. Yeah, that would be unfair.

11 Q. Very unfair.

12 And would you also agree that it would be
13 very unfair if there were 12 people in the jury box who
14 couldn't ever give the death penalty, based upon their
15 personal feelings, ever, under any circumstances, regardless
16 of the evidence that they heard?

17 A. I would.

18 Q. So then you can see that we are trying to find
19 people who are not in either extreme --

20 A. Yes, ma'am.

21 Q. -- who believe that, as you answered in
22 Question 68, that the death penalty is appropriate in some
23 cases, and the reverse of that, which I assume is true and
24 you tell me if it's not, that it's not appropriate in some
25 other cases?

1 A. That would be the way I would see it, yes.

2 Q. Perfect.

3 In response to your Question 67, as you had
4 an option of do you generally favor it, are you generally
5 against it, or do you have no opinion, can you explain to me
6 a little bit about what that means, the "no opinion"?

7 A. Personally, the way I guess that I feel about it
8 is that it would depend on the case in general. It would
9 depend on the circumstances around it, what happened. I
10 guess that my answer of no opinion means that I am
11 impartial, that I could see going either way.

12 Q. And that's really what we're trying to -- for lack
13 of a better term, trying to ferret out.

14 A. Uh-huh.

15 Q. You know, would you be as equally able -- and, of
16 course, it's kind of hard for you to answer these questions
17 without knowing the sentencing scheme, which we're going to
18 get to, but as you sit here today, not knowing any evidence
19 in a case, would you be able to, if you were a juror on a
20 capital murder case, to equally consider the possibility of
21 a life sentence or a death sentence?

22 A. Yes.

23 Q. You don't have any strong feelings for or against
24 either one of those options?

25 A. No, ma'am.